



**Warui v Republic (Criminal Appeal E032 of 2024)
[2025] KEHC 2421 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2421 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL APPEAL E032 OF 2024
LN MUTENDE, J
MARCH 6, 2025**

BETWEEN

MICHAEL NDIRANGU WARUI APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. Michael Ndirangu Warui, the appellant/applicant, approached this court through a Notice of Motion dated, 23rd October, 2024, seeking bail pending hearing and determination of appeal; and, stay and/or suspension of execution of sentence in Nyahururu Magistrate's Court Criminal Case No. SOA 9 of 2020, *R v Michael Ndirangu Warui*.
2. The application is premised on grounds that: the applicant was charged, convicted and sentenced for the offence of defilement on 10th September, 2024, to 15 years imprisonment; he has very young children who solely depend on him as the breadwinner and it is only fair that he continues discharging his parental responsibility over the children as he pursues the appeal; and, that he suffers from a medical condition that will best be taken care of while out on bail.
3. That: the appeal has high chances of success as can be discerned from the petition of appeal; the applicant always attended court during trial up to conviction and at no time did he breach the bail terms; is willing to observe any condition that may be imposed; and, that the applicant will have served a substantial part of his sentence by the time the appeal is determined.
4. The State through learned Senior Principal Prosecution Counsel, Ms, Gladys Kariuki filed an affidavit opposing the application. She deposed that the grounds of appeal raised do not raise any substantial or weighty points of law and the principles set in *Jivraj Shah v Republic* [1986] eKLR. That there are no exceptional circumstances relied on in the application as much as the applicant did not abscond bail in the lower court.



5. In submissions through the firm of Maina P. Kairu & Co Advocates, it is urged that the appeal has high chances of succeeding as the prosecution failed to produce exhibits mentioned in evidence; the court failed to consider alibi defence even when the prosecution failed to dislodge the same; and, the court failed to consider inconsistencies in the complainant's testimony. That the applicant has young children of tender age in school who need him.
6. I have duly considered rival arguments. This court has the authority to reach a decision based on its judgment and discretion depending on the circumstances of the case. Section 357 of the [Criminal Procedure Code](#) which is in respect of admission to bail or suspension of sentence pending appeal provides as follows:
 - (1) After the entering of an appeal by a person entitled to appeal, the High Court, or the subordinate court which convicted or sentenced that person, may order that he be released on bail with or without sureties, or, if that person is not released on bail, shall at his request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal;
7. It is urged that in the lower court the applicant was not a flight risk such that the history of appearing without fail should be taken into consideration. In *Masrani v R* [1960] EA 321, it was held that:

“Different principles must apply after conviction. The accused person has then become a convicted person and the sentence starts to run from the date of his conviction.” Also see *Somo v Republic* [1972] EA.
8. In *Mutua v R* [1988] KLR 497 the Court of Appeal stated thus:

“It must be remembered that an applicant for bail has been convicted by a properly constituted court and is undergoing punishment because of that conviction which stands until it is set aside on appeal. It is not wise to set the applicant at liberty either from the point of view of his welfare or of the state unless there is a real reason why the court should do so.”
9. In [Daniel Dominic Karanja v Republic](#) [1986] eKLR, while considering an application for bail pending appeal, the court, *inter-alia*, stated that:

“The most important issue here is if the appeal has such overwhelming chances of success that there is no justification for depriving the applicant of his liberty. The minor relevant considerations would be whether there are exceptional or unusual circumstances. The previous good character of the applicant and the hardship, if any, facing the wife and children of the applicant are not exceptional or unusual factors: see *Somo v Republic* [1972] E A 476. A solemn assertion by an applicant that he will not abscond if he is released is not sufficient ground, even with support of sureties, for releasing a convicted person on bail pending appeal.”
10. It has not been expressly demonstrated that there exist exceptional circumstances that would require the applicant to be released on bail. As afore stated the question of the applicant's children being in school is inconsequential. The allegation of being unwell without proof cannot persuade the court to grant bail at this stage,



11. In the case of *Jivraj Shah v Republic* [1986] eKLR the Court of Appeal stated that:

“the principal consideration is if there exist exceptional or unusual circumstances upon which this court can fairly conclude that it is in the interest of justice to grant bail. If it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be urged, and that the sentence or a substantial part of it, will have been served by the time the appeal is heard, conditions for granting bail will exist. The decision in *Somo v Republic* [1972] E A 476 “
12. The applicant had the obligation to demonstrate that his case has overwhelming chance of succeeding. Concerns raised are matters to be interrogated on appeal. The issue whether or not evidence presented was not compelling enough to return a verdict of guilty must be established. It has been alleged that apparent inconsistencies were overlooked, this will be interrogated upon the court having an in-depth consideration of evidence adduced which has not been availed. The question of misapplication of the law which is relevant has not been raised.
13. In a nutshell, I am not satisfied that there exist exceptional circumstances warranting grant of bail pending appeal. The applicant who was sentenced to serve 15 years imprisonment, a minimum sentence for the offence the applicant faced, has so far been in prison for six (6) months. Considering the number of criminal appeals pending which are few, once admitted the appeal shall be fast tracked.
14. In the result, the applicant has not met the threshold required for grant of bail pending appeal. Accordingly, the application is dismissed.
15. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF MARCH, 2025.

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L.N. MUTENDE

JUDGE

