



REPUBLIC OF KENYA



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**Waziri v Republic (Criminal Appeal E096 of 2024)
[2025] KEHC 2809 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2809 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E096 OF 2024
HM NYAGA, J
MARCH 6, 2025**

BETWEEN

RASHID OMAR WAZIRI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Application before me is the Notice of Motion dated 20th October 2024, which seeks the following orders;
 - i. That this Application be certified urgent and its service be dispensed with in the first instance.
 - ii. That the Honourable Court be pleased to admit the Applicant to reasonable bail/bond terms pending hearing and determination of the substantive appeal filed herein.
 - iii. Spent.
 - iv. That the judgment and sentence of the subordinate court(Hon. L. Maina SPM) dated and delivered on 4th September 2024 be suspended pending hearing and determination of the appeal herein.
 - v. That the Honourable court be at liberty to make such other orders and/or give any directions that it deems just, fair and necessary.
2. The Application is propped by the grounds set out on its face and is supported by the Affidavit sworn by the applicant on even date.
3. The Applicant’s case is that he was charged before Meru Chief Magistrate’s Court vide S.O. case No. 25 of 2018 with the offence of defilement, contrary to section 8(1) and (2) of the [Sexual Offences Act](#). He also faced an alternative count of indecent act with a child, contrary to section 11(1) of the said Act.



That after a full trial, he was found guilty, convicted on the principal count and sentenced to ten(10) years imprisonment. That being aggrieved by the conviction and sentence of the trial court, he has filed an appeal against both the conviction and sentence.

4. The Applicant further avers that this Appeal has high chances of success as evidenced by the petition filed herein which raises substantial points of law.
5. The Applicant also states that he had always attended court and he will do so if he is granted bail pending appeal, thus he is not a flight risk. That it is just and equitable that the orders be granted as he is a community leader of several public projects. That he is sickly and requires urgent medical attention.
6. The Respondent file a response, in the form of grounds of opposition. It is averred that the applicant was properly charged in court. That the appeal has no high chance of success. That it is unlikely that the applicant will have served a substantial part of his sentence before the appeal is heard. That there are no exceptional circumstances shown upon which the court can fairly conclude that it is in the interest of justice to grant bail. That although this court has the discretion to grant bond/bail pending appeal, no sufficient grounds have been adduced to warrant the orders. That the Prisons prioritize the well being and the health of convicts and he has access to healthcare. That alternatively, the appeal can be heard and determined expeditiously.
7. Bond or bail pending Appeal is provided for under Section 357 of the [Criminal Procedure Code](#) (CPC). It provides;

“ 357. Admission to bail or suspension of sentence pending appeal

- (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: Provided that, where an application for bail is made to the subordinate court and is refused by that court, no further application for bail shall lie to the High Court, but a person so refused bail by a subordinate court may appeal against refusal to the High Court and, notwithstanding anything to the contrary in sections 352 and 359, the appeal shall not be summarily rejected and shall be heard, in accordance with such procedure as may be prescribed, before one judge of the High Court sitting in chambers.
- (2) If the appeal is ultimately dismissed and the original sentence confirmed, or some other sentence of imprisonment substituted therefor, the time during which the appellant has been released on bail or during which the sentence has been suspended shall be excluded in computing the term of imprisonment to which he is finally sentenced.
- (3) The Chief Justice may make rules of court to regulate the procedure in cases under this section.”

8. It is clear that this court has powers to grant bond/bail pending Appeal.



9. The principles for consideration for the grant of bond/bail pending appeal were set out in *Ademba vs Republic* 1983 eKLR where the Court of Appeal held that;

“.....bail pending appeal may only be granted if there are exceptional or unusual circumstances. The likelihood of success in the Appeal is a factor taken into consideration in granting bail pending appeal is a factor taken into consideration in granting bail pending appeal..”

10. Also, in *Dominic Karanja vs Republic* (1986) eKLR, it was held that;

- “(a) The most important issue was that if the appeal had such overwhelming chances of success, there is no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.
- (b) The previous good character of the applicant and the hardships if any facing his family were not an exceptional circumstance where there existed medical facilities for prisoners;
- (c) A solemn assertion by an applicant that he will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal.”

11. In the case of *Charles Owanga Oluoch vs The DPP* [2015] eKLR where it was held thus;

“The right to bail is provided under Article 49(1) of *the Constitution* but is at the discretion of the court, and is not absolute. Bail is a constitutional right where one is awaiting trial. After conviction that right is at the court’s discretion and upon consideration the circumstances of the application. The courts have over the years formulated several principles and guidelines upon which bail pending appeal is anchored. In the case of *JivRaji Shah vs R* [1966] KLR 605, the principle considerations for granting bail pending appeal were stated as follows:

- “(1) The principle consideration in an application for bond pending appeal is the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it in the interest of justice to grant bail.
- (2) 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 argued and that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail exists.
- (3) The main criteria is that there is no difference between overwhelming chances of success and a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed and the proper approach is the consideration of the particular circumstances and weight and relevance of the points to be argued.”

10. Lastly in the case of *Jivraj Shah vs Republic* [1986] eKLR the court also reiterated the principles to be applied in determination whether to grant or deny bail pending Appeal. It was held that;

- a. The existence of exceptional or unusual circumstances upon which the court can fairly conclude that it just to grant bail.



- b. If it appears prima facie from the totality of the circumstances that the appeal is likely to be successful an account of some substantial point of law to be urged.
 - c. The sentence or a substantial part of it will have been served by the time the appeal is heard.
11. Thus, the considerations for the court to grant or deny bond pending appeal are;
 - a. That the Appeal has overwhelming chances of success.
 - b. The previous good character of the Applicant
 - c. The existence of exceptional or unusual circumstances.
 - d. The sentence or substantial part of it will have been served by the time the Appeal is heard.
11. I have considered the Application. The applicant was convicted on 28th August 2024, and was sentenced on 4th September 2024. This appeal was filed on 9th September 2024.
12. At present the lower court record has been availed with certified proceedings.
13. I have also looked at the petition of appeal. Even though the appellant avers that it raises substantial questions of law it is essentially founded on facts and the findings of the trial court. The grounds adduced by the Applicant call for the court to re-evaluate the evidence, as it is obliged to (See *Okeno vs Republic*[1972] EA 32).
14. At this stage, the court ought to be cautious not to try and determine the merits of the appeal, unless there are issues that are so glaring and obvious regarding the matter. I see no such issues.
15. In my opinion, there are no exceptional or unusual circumstances that would necessitate the grant of the orders sought. The health of the appellant can be addressed by the Prison Authorities, under whose custody the appellant is.
16. Whereas the previous good record of the Applicant is a ground for consideration, that alone is not sufficient to warrant the grant the orders sought. It must be remembered that during the trial, the Appellant was presumed to be innocent. As matters stand now, he has been convicted by a court of competent jurisdiction. He is no longer presumed to be innocent.
17. At present, this court is handling appeals at a very reasonable rate. There are really no inordinate delays in determining the same. If anything, it is the appellant himself who has failed to prosecute the appeal, hence contributed to any delay.
18. I am of the opinion that this is an Appeal that can be heard and determined in the shortest time possible.
19. Consequently, I disallow the application.
20. To expedite the appeal, the following directions are issued.
 - a. The appeal is admitted to hearing.
 - b. The manner in which the appeal will be canvassed will be given shortly after delivery of this ruling.

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

H. M. NYAGA,

JUDGE.

