



REPUBLIC OF KENYA



**Leparan v Republic (Criminal Appeal E002 of 2024)
[2025] KEHC 4285 (KLR) (Crim) (1 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4285 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E002 OF 2024
CJ KENDAGOR, J
APRIL 1, 2025**

BETWEEN

MAKALLAH FRED LEPARAN APPLICANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the sentence of Hon. E. Kimilu dated 4th October, 2023 and Judgment dated 6th September, 2023 in Milimani Chief Magistrates' Court Criminal Case. No. E4188 of 2020)

RULING

1. The Appellant lodged the present appeal that is pending hearing and determination. This Ruling is on an application dated 10th November, 2023 for bail pending hearing of the appeal.
2. The background is that the Appellant was charged jointly with another with 1 count of conspiracy to commit a felony namely trafficking in persons, 3 counts of trafficking in persons and 3 counts of neglect of a child in Milimani Chief Magistrate's Court Criminal Case No. E4188 of 2020.
3. Upon conclusion of the trial, the Appellant was found guilty on all counts and was sentenced as follows;

Count 1- three (3) years imprisonment;

Count II, III, and IV – thirty (30) years imprisonment to run concurrently;

Count V, VI, VII – each two (2) years imprisonment to run concurrently.



The trial Court divided the cumulative 35 years sentence to 1st schedule of twenty five (25) years in custody and the remainder ten (10) years to be a probation sentence.

4. He was dissatisfied with the conviction and sentence and preferred the present appeal.
5. The application for bail pending appeal is premised on the following grounds;
 - i. That the appeal has high chances of appeal
 - ii. That the appellant has asthma and is suffering during his continued remand.
 - iii. That the lengthy determination process for the appeal is likely to render the same nugatory;
 - iv. That the applicant was out on bond during the trial, which demonstrated that he is compliant with the bond terms.
 - v. That the social inquiry report prior to his sentencing was favourable.
 - vi. That his imprisonment is causing economic hardship for his family, as he was the sole provider breadwinner.
6. The application is anchored on Section 357 (1) of the *Criminal Procedure Code* which provides as follows;

“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. The Appellant relied on the cases of *Jivraj Shah v. Republic* [1986] eKLR, *Dominic Karanja v Republic* [1986] eKLR and *Omondi v Republic* [2023] KEHC 2004 (KLR). These decisions outline principles for determining bail pending appeal.
8. The Appellant needs to demonstrate that the appeal has overwhelming chances of success. Additionally, it is essential to demonstrate that there are exceptional circumstances that justify his release on bail.
9. The appeal has raised several crucial issues for consideration which have been summarised as follows;
 - i. That the trial magistrate erred in convicting the appellant on charge of conspiracy while discharging the co- accused, despite the nature of the offence requiring participation from multiple parties;
 - ii. That the conviction was based on circumstantial evidence;
 - iii. That trial court failed to consider the appellant’s defence.
10. The Applicant has invited the Court to consider the proportionality of the sentence, but this is an issue best left to be addressed in the main appeal.
11. The complete record of the appeal, along with all relevant documents from the lower Court file, has been compiled and provided. The appeal has been admitted, and it is ready for hearing. There are no anticipated delays in typing of the proceedings as presented in the application. It is highly unlikely that he will have served a substantial portion of the sentence before the appeal is heard and determined.



12. The appellant claimed that he did not breach the conditions of bail set during the trial and that he is a family man. However, these points are irrelevant to his entitlement to bail pending appeal.
13. The medical claim is denied as treatment is available in prison; additionally, he failed to provide any evidence of this medical condition.
14. I have no doubt that the issues raised in the appeal warrant thorough examination; however, the court must also take into account several other critical circumstances in this case. These include the serious nature of the charges brought against the appellant and the potential risks associated with his release. The convictions are for offences of human trafficking, which are classified as felonies.
15. The Court must weigh the Appellant's arguments against the seriousness of the crimes for which he has been convicted. The appellant has not presented any unique personal circumstances or factors that would justify granting bail while the appeal is under consideration. It is insufficient to simply state grounds. In the absence of demonstration of exceptional circumstances or specific risks during custody, the bail request lacks adequate justification.
16. The application is dismissed.
17. The appeal shall be set for hearing soonest.
18. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 1ST DAY OF APRIL, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Ms Moige Advocate for Appellant

Mr. Omondi, ODPP for Respondent

