



REPUBLIC OF KENYA



KENYA LAW
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**Muturi v Republic (Criminal Case E029 of 2025)
[2025] KEHC 4466 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4466 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E029 OF 2025**

TW OUYA, J

APRIL 8, 2025

BETWEEN

GRACE WANGUI MUTURI APPLICANT

AND

THE REPUBLIC RESPONDENT

RULING

1. Before this court is an application for bail pending appeal emanating from the judgement of Hon. Susan Mwangi, PM delivered on 13th March 2025 in MCCR E622 of 2023. The application was brought under certificate of urgency dated 26th March 2025 for orders that:
 - i. Spent.
 - ii. That the honourable court be pleased to admit the applicant to bail pending hearing and determination of the instant appeal.
 - iii. That the applicant be released on the same bond terms similar to the bond terms ordered at the trial court.
 - iv. That costs of this application be borne by the Respondent.
2. The application is supported by the following grounds and affidavit to the effect that the applicant is a mother to a 7 year old and a sole breadwinner to her father who is sickly. That she has a fixed abond within Murang'a County and is not a flight risk among other grounds.
3. The matter was canvassed through oral submissions by the Applicant's counsel for the state. Counsel for the state reiterated the grounds stated above and in addition added that the applicant has an arguable appeal which raised triable issues and that she is likely to spend a considerable amount of time incarcerated during the pendency of the appeal and the time of the sentence may be substantially served and that would prejudice the applicant.



4. Counsel urges this court to consider that the Applicant was admitted to bond of Kshs 20,000 cash bail and during the entire period, she did not abscond. That the applicant is willing to abide by the conditions that will be provided by the court.
5. Counsel for the state makes reference to Section 257(1) of the [CPC](#) and the authorities of [Dominic Karanja V. R](#) (1986) eKLR and [Jivraj V.R](#) (1966) which laid down the consideration to be made in considering application of this nature;
 - i. Whether there's arguable case with a high chance of success.
 - ii. Whether there are unusual circumstances/or special circumstances that would allow court to grant bail pending appeal.
 - iii. Whether a substantial time of the sentence will have been served during the pendency of the appeal before Judgement is delivered to render the outcome nugatory.
6. Counsel argues that previous bond terms and court attendance is not one of the considerations for bond pending appeal. Counsel however does not oppose the application based on the grounds that there is an arguable appeal on the face of the record and that unusual or special circumstances have been demonstrated by virtue of the Applicant being a single mother of a 7 year old child and being a sole bread winner for her sickly father.
7. I have duly considered the application before this court together with the grounds, affidavit and submissions by counsel from both sides. This court underscores that bail pending appeal may be granted upon request at reasonable terms at the discretion of the court.
8. Conditions for bail pending appeal were well laid down in the case of [Jivraj Shah vs Republic](#) (1986) eKLR, where the court of appeal stated;

“There is not a great deal of local authority on this matter and for our part such as we have seen and heard tends to support the view 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 which was referred to by this court with approval in Criminal Application No NAI 14 of 1986, *Daniel Dominic Karanja v Republic* where the main criteria was stated to be the existence of overwhelming chances of success does not differ from a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed. The proper approach is the consideration of the particular circumstances and the weight and relevance of the points to be argued. It is almost self-defeating to attempt to define phrases or to establish formulae.”
9. The same subject has also been considered in other decisions of the High Court. In *Somo vs Republic* [1972] EA 476, the High Court (Trevelyan, J.), inter alia, held that the most important ground is that the appeal has an overwhelming chance of being successful: in that that case there is no justification for depriving the applicant of his freedom.
10. With the above considerations in mind, the court observes that the prosecution does not oppose the application for bond pending appeal on two grounds. One is that the appeal has got overwhelming



chances of success and secondly, that given the imprisonment time of two years, a substantial part of the sentence may be spent before the judgement rendering the outcome nugatory.

11. This court cannot agree further with the position taken by the respondent/prosecution that the above two are the only justifiable reasons given by counsel to qualify the applicant for bond pending appeal. The unusual circumstances cited like hypertension are matters that can be dealt with within prison.
12. In line with the provisions Sections 356 and 357 of the *Criminal Procedure Code* this court is inclined to grant the order prayed by the applicant. It is hereby ordered that bond is granted to the applicant at the same terms as were ordered at the trial court pending the hearing and determination of this appeal. For avoidance of doubt, the applicant is admitted to cash bail of Kshs. 20,000/= pending hearing and determination of her appeal.
13. No orders as to costs.

DATED, SIGNED AND DELIVERED THIS 8TH DAY OF APRIL, 2025.

HON. T. W. OUYA

JUDGE

Accused.....Mwangi Macharia

Prosecutor.....P. Mwangi

Court Assistant.....Jackline

