



REPUBLIC OF KENYA



KENYA LAW
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**Hajji v Republic (Criminal Appeal E003 of 2025)
[2025] KEHC 5900 (KLR) (Crim) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5900 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISILOLO
CRIMINAL
CRIMINAL APPEAL E003 OF 2025
SC CHIRCHIR, J
MAY 12, 2025**

BETWEEN

MOHAMUD MOHAMED HAJJI APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant/Appellant has filed the Chamber summons dated 17/2/2025 seeking for admission to bail pending Appeal.
2. He states that he was convicted and sentenced to 20 years by the Chief Magistrate's Court in Isiolo in Sexual Offence case No. E012 of 2024; that he was dissatisfied with the outcome and has since filed an appeal.
3. It is his submission that the Appeal has high charges of success; that the Appeal would be rendered nugatory if he is not released on bail and that he is likely to serve the term before his Appeal is heard. He has further stated that he has a medical condition which requires a follow-up by a specialist.
4. The application is opposed by the respondent on the basis of grounds of opposition dated 24/2/2025.
5. The respondent states that the Application does not meet the threshold for grant of the order being sought; that the Applicant's innocence is already compromised and that there are no peculiar or exceptional circumstances to warrant the granting of bail.
6. It is further stated that the right to bail under Section 357 (1) of *Criminal Procedure Code* is discretionary and not absolute. It is also stated that there is no probability of the Appellant serving a sentence of 20 years before his Appeal is heard. The Respondent further expresses apprehension that due to the long sentence, the Appellant is likely to abscond.



Determination

7. Bail pending appeal, unlike bail pending trial, is at the discretion of the court. In *Chimambai v Republic* [1971] EA343 the court held: the case of an Appellant under the sentence of imprisonment seeking bond lacks the strongest elements normally available to an accused person seeking bail before trial, namely the presumption of innocence -----"
8. Thus bail pending Appeal being at the discretion of the court, the courts have developed guiding principles in the exercise of the said discretion . The principles have been restated in many past decisions of the court. In the case of *Dominic Karanja v Republic* [1980] KLR 612 the court of Appeal stated: "The most important issue was that if the appeal had such overwhelming chances of success, there was no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances".
9. The applicant has argued that he suffers from Nephritic Peptic ulcer, which requires frequent visits to a specialist. He has attached a medical report from Isiolo County Referral Hospital. However, a medical condition does not give one automatic right to bail pending Appeal. I am not convinced that the stated medical condition cannot be attended to within the prison medical facility.
10. It is a matter of common notoriety that Kenyan prisons hold a sizeable number of convicts suffering from chronic illnesses, which are managed at the medical facilities available in prisons In the decision of *Dominic Karanja* (supra) the court went on to state: ill health per se would also not constitute an exceptional circumstance where there existed medical facilities for prisoners"
11. The Applicant was sentenced to 20 years in prison. To argue that he would have served a substantive portion of his sentence by the time the appeal is heard and determined , is an exaggeration.
12. On the chances of appeal succeeding, I have considered the grounds of Appeal and has read the judgment of the trial court. The record of proceedings is however not available and therefore, I am not in a position to make a fair assessment on the chances of the Appeal succeeding.
13. In conclusion, the Applicant has failed in demonstrating that there are exceptional circumstances entitling him to bail pending appeal.
14. The Application is not merited. It is hereby dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ISIOLO THIS 12TH DAY OF MAY 2025
S CHIRCHIR.

JUDGE.

In the presence of:

Kashane Gollo- Court Assistant

M. Kitheka for the Appellant

Mr. Ngetich for the Respondent.

