



**Tumbo v Republic (Criminal Appeal E024 of 2025)
[2025] KEHC 6768 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6768 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL APPEAL E024 OF 2025
EM MURIITHI, J
MAY 22, 2025**

BETWEEN

FENINAD JAMES GICHOBI TUMBO APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. This is a Ruling on application dated 7/4/2025 for Bail pending appeal from conviction and sentence for the offence of defilement contrary to section 8(1) (2) of the [Sexual Offences Act](#).
2. The Affidavit in support of the Bail application sworn by the Applicant on 7/4/2025 sets out the grounds of appeal and application as follows:

“SUPPORTING AFFIDAVIT

I, FENINAD JAMES GICHOBI TUMBO of C/O P.O. BOX 56, KERUGOYA in the republic of Kenya, hereby conscientiously declare solemn oath and state as follows;

1. That I am the applicant/appellant herein and therefore competent to swear this affidavit.
2. That I was convicted in Gichugu PMC CRIMINAL Case no. £016 Of 2023 on 28TH FEBRUARY 2025. (Annexed hereto are copies of proceedings and judgment marked "FJG1"
3. That I have good grounds of appeal with extremely high chances of success. (Annexed hereto is a copy of (petition of appeal marked " FJG2 ")
4. That some of the grounds of appeal that I shall argue are as follows;



- i) That the learned magistrate erred in law and fact by not considering that the evidence produced in court was not credible.
- ii) That the learned magistrate erred in law and tact by preferring to hearsay evidence by the prosecution side.
- iii) That That the learned magistrate erred in not considering the evidence adduced by the appellant during defense hearing and mitigation factors.
- iv) That the learned magistrate completely and unfairly disregarded my defence.
5. That I was on bond in the lower court and hereby verily aver that if I am granted bail pending appeal, I shall carefully ensure that I attend court as and when required.
6. That I hereby verily aver that there are sufficient grounds to grant me bail pending appeal.
7. That I swear this affidavit in support of my application herein.
8. That what is herein above deponed is true to the best of my knowledge, information and belief.”

3. The DPP did not oppose the application and in oral submission before the Court, Counsel for the DPP, Mr. Mamba said:

“Mr. Mamba:

I have looked at the medical history and I am persuaded that the Court has jurisdiction under section 124 of the Criminal procedure Code to order bail pending appeal. I do not oppose the application.”

4. The court has considered the application for bail pending appeal on the test set out in *Jivraj Shah v. R.* (1986) KLR 605.
5. The court is not satisfied that the Petition of Appeal which is primarily based on the ground of insufficiency of evidence presents an exceptional circumstance to warrant the grant of bail pending appeal.
6. In addition, there is similarly no exceptional circumstance that the applicant may serve a substantial portion of his sentence of imprisonment for twenty (20) years before the appeal is heard and determined.
7. As to the principal ground of health of the applicant, it is noted that all the medical reports of the applicant' alleged asthmatic condition are presented from a private medical facility namely Frajoy Health Services Enterprises whose physical address is not disclosed. The reports are indicate diagnosis of Bronchial Asthma and relate to the period 11/2/2022 (earliest) to 61/5/2024 (latest).
8. All pre-date the conviction and sentence of imprisonment for 20 years for defilement passed on 28/2/2025. Yet during the mitigation before sentencing by the trial Court no mention of the accused's asthmatic condition made. The mitigation made by Counsel for the Accused on 14/2/2025 is set out in full below:

“



“ 14. 2.2025
Before Hon. Wanjiru M.N - SRM
Pros: Muriithi
Accused: Present
Court: Judgment is ready and delivered via Teams.
Hon. Wanjiru M. N - SRM
Pros: We have no previous records of conviction.
Mitigation
Nyangati: The victim is now 22 years old. He was 19 by the time of offence. He is born of a single mother. He has 4 siblings. He was due to enroll in college. It shows that he has potential to be a great man in the nation. The accused persons life has stalled. He is not able to pursue his education. He is emotionally and psychologically disturbed. He is the first born and therefore his siblings look up to him. He is remorseful extremely. We ask court to be lenient in sentencing.
Hon. Wanjiru M.N - SRM
14. 2.2025”

9. It is simply unbelievable that the accused would have been suffering from such acute asthmatic condition as would justify the release from custody on bail pending appeal in this case, supported by the reports now attached in the application ranging from 11/2/2022 to 16/5/2024 and the Counsel would fail to produce them in mitigation before the Court on 14/2/2025!
10. There is a possibility that the reports are doctored or procured to support the bail application and evade the just punishment of the offender for his crime.
11. Without a report from a certified public medical officer of health from a public hospital, the court is unable to consider whether the applicant alleged medical condition presents an exceptional circumstance to warrant release from prison custody.
12. Most importantly, the Prison medical authority has not indicated that it is unable to offer necessary services, with the possibility of referral to public hospital facilities accessible to the Prison, for the treatment and management of the condition that the offender suffers so as to justify unusual intervention. See *Dominic Karanja v. R* (1986) KLR 612 that the ill health per se of an offender is not an exceptional circumstance where medical facilities for treatment exist in prison.
13. What is before the Court, with respect, is a casual application for bail pending appeal without demonstrated unusual or exceptional circumstances for intervention.
14. There is nothing unusual in the applicant's youthful age of 22 years to justify release from custody on bail pending appeal. As well, the applicant's previous good character or hardship of the applicant's family are not exceptional factors. See *Dominic Karanja v. R*, supra.
15. Significantly, the court considers that the offence of defilement contrary to section 8(1)(2) of the *Sexual Offences Act* is a grave offence, which calls for deterrence of the offender, and release from custody on bail may only be justified on the strictest consideration of existence of unusual and exceptional circumstances, which has not been demonstrated in the present case.



Orders.

16. Accordingly, for the reasons set out above, the application for bail pending appeal is declined.

17. For determination of the merit of the appeal, the matter shall be set for hearing in usual way.

Order Accordingly.

DATED AND DELIVERED THIS 22ND DAY OF MAY 2025.

EDWARD M. MURIITHI

JUDGE

