



**Veld v Republic (Criminal Appeal E021 of 2025)
[2025] KEHC 6469 (KLR) (Crim) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6469 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E021 OF 2025
MW MUIGAI, J
MAY 15, 2025**

BETWEEN

JAN IN'T VELD APPELLANT

AND

REPUBLIC PROSECUTION

RULING

1. Jan IN'T VELD alias Dad ok alias Teacher Jan Alias Mzungu was charged with various offences under the [Sexual Offences Act](#).
 - i. Indecent Act with a Child Contrary to Section 11(1) of the [Sexual Offences Act](#) :
On diverse dates between April 2022 and June 2022 at known place within [Particulars Withheld] Uasin Gishu County the accused intentionally unlawfully and indecently touched the penis and buttocks of a minor male G.S aged 16 years using his hands.
 - ii. Sexual Communication with a child contrary to Section 16 A I II of the [Sexual Offences Act](#) :
On diverse dates between April 2022 and November 2023 at unknown place the accused intentionally and unlawfully communicated with a minor aged 16 years old through social network platform namely WhatsApp account on mobile no +3162xxxxxxx in a manner intended to encourage the said child to communicate in a sexual manner.
 - iii. Child Pornography contrary to section 16 (1) (b) as read with Section 16 (1) (g) of the [Sexual Offences Act](#).
On 13th June 2023 at unknown place the accused intentionally and unlawfully exposed a minor GS aged 16 years to obscure images –audio visual through a social network platform



namely WhatsApp account on mobile no +3162xxxxxxx with intentions of encouraging the said child to engage in sexual acts .

- iv. Child Pornography contrary to section 16 (1) (b) as read with Section 16 (1) (g) of the [Sexual Offences Act](#).

On 13th September 2023 at unknown place the accused intentionally and unlawfully exposed a minor G.S aged 17years to obscene images –audio visual through a social network platform namely WhatsApp account on mobile no +3162xxxxxxx with intentions of encouraging the said child to engage in sexual acts .

- v. Child Pornography contrary to section 16 (1) (b) as read with Section 16 (1) (g) of the [Sexual Offences Act](#).

On 17th September 2023 at unknown place the accused intentionally and unlawfully exposed a minor G.S aged 17 years to obscene images –audio visual through a social network platform namely WhatsApp account on mobile no +3162xxxxxxx with intentions of encouraging the said child to engage in sexual acts.

- vi. Child Pornography contrary to section 16 (1) (b) as read with Section 16 (1)(g) of the [Sexual Offences Act](#).

On 19th September 2023 at unknown place the accused intentionally and unlawfully exposed a minor G.S aged 17 years to obscene images –audio visual through a social network platform namely WhatsApp account on mobile no +3162xxxxxxx with intentions of encouraging the said child to engage in sexual acts.

- vii. Child Pornography contrary to Section 16 (1) (b) as read with Section 16 (1)(g) of the [Sexual Offences Act](#).

On 20th September 2023 at unknown place the accused intentionally and unlawfully exposed a minor G.S aged 17 years to obscene images –audio visual through a social network platform namely WhatsApp account on mobile no +3162xxxxxxx with intentions of encouraging the said child to engage in sexual acts .

- viii. Child Pornography contrary to Section 16 (1) (b) as read with Section 16 (1)(g) of the [Sexual Offences Act](#).

On 2nd October 2023 at unknown place the accused intentionally and unlawfully exposed a minor GS aged 17 years to obscene images –audio visual through a social network platform namely WhatsApp account on mobile no +3162xxxxxxx with intentions of encouraging the said child to engage in sexual acts.

- ix. Child Pornography contrary to Section 16 (1) (b) as read with Section 16 (1)(g) of the [Sexual Offences Act](#).

On 2nd October 2023 at unknown place the accused intentionally and unlawfully exposed a minor GS aged 17 years to obscene images –audio visual by sending a link nl.pornhub.com to the minor using a social network platform namely WhatsApp account on mobile no +3162xxxxxxx with intentions of encouraging the said child to engage in sexual acts .

- x. Child Abuse Contrary to section 22 (1) (b) as read with Section 22 (2) of the Childrens’s [Act No 29 of 2022](#).

On diverse dates between 16th January and 26th May 2022 at unknown place the accused intentionally and unlawfully through a social network platform namely WhatsApp account



on mobile no +3162xxxxxxx received obscene images of minors A.A aged 10 years and A.B aged 7 years for purposes of sexual gratification

2. The Appellant was convicted on all 10 counts and was sentenced to serve 10 years jail term concurrently on custodial sentences and payment of fines and restitution to victims on Counts where fines were imposed.
3. The Appellant is aggrieved and he preferred the instant appeal against the conviction and sentence of the Trial Court delivered on 31/1/2025 as per the Petition of Appeal filed in this Court on 17/3/2025.

Application For Bail

4. The Appellant further filed the application dated 5/3/2025. The application is brought under the provisions of Article 49 (h) of *the Constitution* of Kenya 2010, Section 357 (1) of the *Criminal Procedure Code* and Order 51 Rule 1 of the Civil Procedure Code; seeking orders that:-
 1. The Court to admit the appellant/ applicant to reasonable bail terms pending hearing and determination of the appeal
 2. The Court to order stay of execution and /or suspension of the sentence in MCC SO E037 of 2023.
 3. The Court to issue an order restraining destruction and disposal or tampering with electronic gadgets devices seized in relation to the case as they are crucial for the preparation and presentation of the Appeal.
5. The grounds of the application are that, the Applicant is 73 years old Dutch National who has travelled and resided in Kenya since 1984 and established deep rooted connections in the country. He has also dedicated himself in philanthropic initiatives that have impacted many people's lives.
6. That the Appellant is in a committed and stable relationship with LA and they have cohabited in the country for 5 years.
7. That the Appellant was in remand during trial after his application for bond was declined. The Appellant's health deteriorated during detention and he suffers from low blood pressure, has previous diagnosis of 1st degree heart block and serious cardiac condition requiring continuous medical supervision currently under Cardiology Unit at Kenyatta National Hospital.
8. That at 73 years his body is no longer resilient and his condition has taken a severe toll on his health. That low blood pressure causes him to collapse unexpectedly placing his life in imminent danger.
9. That the required medical care cannot be provided within the confines of prison. That harsh conditions of prisons significantly undermine efforts to stabilize his health and his current state requires urgent and sustained medical care effectively administered outside incarceration.
10. That he has a record of good behavior during detention as proof that he will comply with bond terms.
11. He has also a stable and verifiable residence in Balozi Estate South B within Nairobi county which is in close proximity to at least 5 police stations. The appellant is willing to report to these police stations in compliance with bond conditions.
12. That he poses no flight risk and is willing to surrender all his travel documents. Further, the Applicant does not have a history of defying court orders or orders from authorities.



13. That the Trial Court ordered destruction of electronic gadgets and devices adduced during trial, the destruction would lead to irreparable prejudice as they form necessary evidence in challenging the conviction.
14. The appellant's depositions are that his appeal has overwhelming chances of success and raises serious questions of facts and law and miscarriage of justice. The Appeal is based on the issue of reliance of insufficient and inconsistent unreliable evidence and failure [of the Trial Court]to evaluate oral and documentary evidence.
15. The Supporting Affidavit by LM deposes that she has known the Appellant since 2008 where they met at Tanzania Optometric Association Conference and since visited each other's country, Netherlands & Tanzania respectively. They instituted the Organization Stitching Focus on Vision which assists vision impairments and supports under privileged families.
16. The deponent submitted the Appellant has deep rooted ties with Community, in Tanzania, Kenya and beyond and has made philanthropic contributions and positively contributed to many lives.
17. That LA relocated to Nairobi to assist him, he has a fixed abode at Balozi Estate close to Akila Police station, Industrial Area police station , Makongeni Police station and Rich field Police station .
18. The Supporting Affidavit of LA, she submitted that the appellant has made substantial contributions through charitable initiatives. These initiatives have positively impacted lives and built strong and meaningful connections.
19. That the Applicant opened a bank account under her name to facilitate payment to charitable organizations relating to visual impairment.
20. That she purchases medication for the applicant every month but the prison conditions exacerbate his health complications posing a serious risk to his health.
21. That she relocated to Nairobi and has been living at Olive Garden Apartments, Balozi Estate South B to facilitate closer monitoring and to offer the applicant the support he needs and deserves.
22. That the Applicant requires immediate and sustained medical attention which he cannot access adequately while in prison and any further delay in securing medical care outside prison could have fatal consequence.
23. That she undertakes to ensure that the applicant resides at the estate and complies with bond terms.

Grounds Of Opposition.

24. The Office of Director of Public Prosecution (ODPP) filed grounds of opposition dated 1/ 4/2025 contesting the application. The prosecution contends that the Applicant has not met the threshold for granting bail pending appeal and/or stay of execution of the Trial Court's sentence.
25. Further, that the Appellant has not established that the intended Appeal has chances of success and has not demonstrated any exceptional and/or unusual circumstances to warrant his release on bail on pending appeal. The Applicant has not established any basis for the rebuttal of the presumption that that his conviction was proper.

Submissions

26. The Parties through respective Advocates high lighted written submissions during oral submissions.



Applicant's Submissions.

27. The Applicant filed submissions through the firm of Atieno Kanyangi & Company Advocates and frames issues for determination as whether there exist unusual and exceptional circumstances to justify grant of bail pending appeal. The case of *Jivraji Shah vs Republic* [1966] eKLR 605 sets out grounds for granting bail pending appeal.
28. The Appellant submitted that the term exceptional circumstances refers to unique compelling situations that justify release of a person even when standard considerations might suggest otherwise.
29. The Applicant's serious health challenges justify his release on bail. That comprehensive evidence photographs, medical records, doctor's notes demonstrate severity of his medical condition and decline of progress since arrest.
30. That the Applicant's health status is incompatible with the conditions of his incarceration underscoring the urgent need for appropriate medical care.
31. That Prison medical facilities and public hospitals are insufficient to meet the Applicant's complex and serious medical requirements.
32. That surveys prove that prison medical care only provides basic medical care whereas the applicant requires specialized medical care in conducive environment.
33. That the applicant is oftenly admitted at Kenyatta National Hospital but is usually discharged back to the prison conditions comprised of poor nutrition, poor sanitation and cannot access balanced diet required for his recovery.
34. The accused counsel further urges that incarceration violates the Applicant's constitutional rights under Articles 50 (2) (c) and 51(1) of *the Constitution*.
35. That every person held in custody retains all rights and fundamental freedoms in the Bill of Rights except to the extent that any particular right is incompatible with the fact of being detained.

Counsel submitted that incarceration does not strip the Applicant's right to health and dignity. Reliance is also placed on the case of *Daniel Ngetich & 2 Others -Vs- Attorney General & 3 Others* (2016) eKLR .
36. That in the case of *Jacob Wambaya –Vs- Republic* (2024) KEHC 15269 KLR, the court granted bail pending appeal noting that deteriorating health was an exceptional circumstance.
37. Further, Article 50 of *the Constitution* guarantees the right of the accused to have adequate time and facilities to prepare for his case. The Appellant's critical condition lack of proper care and nutrition in prison system exacerbates his condition thus impeding his capacity to engage meaningfully in the appeal.
38. That the Appellant also demonstrated compelling reasons for his release and which prove that he will not abscond. That the appellant is not a flight risk, he has fixed residences and strong community ties and that he risks serving the sentence before appeal hearing.
38. That the appeal is grounded on substantial legal and f actual grounds.
40. That the State has not provided any ground why he should not be released on bail. The Appellant relies on the case of *Republic -Vs- Richard David Aiden* (2016) eKLR where the court affirmed the right of foreign national to benefit from bail. The case of *Grace Kananu Namulo -Vs- Republic* (2018) eKLR where the court also reiterated the primary consideration of bail is whether the accused would turn up



during trial compelling grounds must be adduced to deny bail and a balance of probability on whether he is likely to abscond.

41. Lastly the case of *Patius Gichobi Njagi & 2 Others -Vs- Republic* (2013) eKLR where the High court held that the state must provide persuasive arguments backed by facts and experiences to contest the right to bail.

Prosecution's Submissions

42. The Prosecution reiterated that bail pending appeal is not an outright right and is given on rare circumstances and at the Court's discretion. That sufficient reasons must exist before a convict is released on bail. That the Applicant no longer enjoys the presumption of innocence and that there is also a presumption that conviction was proper.
43. That determination of whether an Appellant should be granted bond is settled in Kenya jurisprudence as per cases of *Somo -vs- Republic* EACA 1972 EA 476 principles restated in *Daniel Dominic Karanja vs Republic* No 14 of 2016 and *Jivraj Shah vs Republic* (supra) both limbs that must be proved are; the appeal has overwhelming chance of success and there are unusual and special circumstances to warrant grant of bail/bond pending appeal.
44. The prosecution frames issues as whether appellant's appeal has overwhelming chances of success and whether exceptional circumstances exist.
45. That the grounds on the affidavit do not establish any success of the appeal or its overwhelming chances. That the Court in considering this ground ought to be cautious not to look into the merit and must limit itself in weighing chances on obvious substantial points of law.
46. The prosecution argues that the conviction was not based on light evidence and that charges were proved beyond reasonable doubt.
47. That no exceptional circumstances have been proved and what has been presented does not amount to unusual circumstances as per court decisions highlighted in the submissions as follows.
48. The case of *Daniel Dominic Karanja -Vs- Republic* where the court found that ill health per se does not constitute unusual circumstances. Further that previous record of good character, hardship facing the family if any is not exceptional
49. The case of *Peter Mukiri Ndirangu -Vs -Republic* where the Court of Appeal added that prison authorities are obligated to look into the overall welfare of convicts.
50. That the fact that he is ready to adhere to bond terms or that he did not breach bond terms at trial is not special circumstance as held in the case of *Joseph Ngari Mwangi -Vs- Republic* .
51. Lastly that the appellant was sentenced to serve 10 years imprisonment. There is no chance that he will serve the sentence before the appeal is determined.

Analysis And Determination.

52. I have considered the application and the grounds, depositions, submissions and case law filed in support of contested positions regarding the application for grant of bail/bond pending Appeal.
53. The grant of bail and/or bond is governed by Section 357 of *Criminal Procedure Code* that allows the Court to consider the circumstances of the case and exercise judicial discretion in grant of denial of bail pending appeal in the interest of justice.



54. The Guiding principles drawn from the Case-law ably cited by Counsel for the Appellant and the State are;

Jivraj Shah -vs- Republic 1986 KECA 36 Daniel Dominic Karanja vs Republic 1986 KECA Ademba -vs- Republic 1983 EACA Mutua -vs- Republic 1985 KLR

- a. There should be proved /shown exceptional or unusual circumstances that exist to warrant grant of bail pending appeal
- b. The Appeal has overwhelming chance(s) of success, where there is reasonable possibility of success on substantial points of law and facts to be argued
- c. The Risk of the Appellant serving the larger part of the sentence before or by the time the appeal is heard and determined on merit.
- d. The Character/Conduct of the Appellant before during and after Trial and sentence, is he violent, risk to release to the family or public or a 1st offender.
- e. The nature and gravity of the offence(s) the Appellant is convicted of;
- f. Expected anticipated undue delay in hearing and determination of the Appeal
- g. Is the Appellant a flight risk, has fixed abode reliable contact is traceable with social ties or not
- h. The Court balances rights/interest of the Appellant vis a vis the victim/public interest.

55. The application for bail pending appeal is distinguished from bail pending the criminal trial. The appellant is convicted of offences and therefore under the law the Appellant is detained on constitutional grounds .

56. As such , the presumption of innocence applicable during bail pending trial and the provisions of Article 49 and 50 of *the Constitution* are not available.

In the case of Masrani -Vs- R [1060] EA 321, it was the court held that :-

“Different principles must apply after conviction. The accused person has then become a convicted person and the sentence starts to run from the date of his conviction.”

57. Also see Chimambhai –Vs- Republic 1971 EA 343 where the Court stated that :-

“The case of an appellant under sentence of imprisonment seeking bond lacks one of the strongest elements normally available to an accused person seeking bail before trial, namely, the presumption of innocence, but nevertheless the law of today frankly recognizes, to an extent at one time unknown, the possibility of the conviction being erroneous or the punishment excessive, a recognition which is implicit in the legislation creating the right of appeal in criminal cases.....”

58. The Applicant seeks bail and /or bond on the main ground that his medical condition continues to deteriorate while in custody and that he seeks release on bond to get proper medical care outside prison.

This medical condition is the special and unusual circumstance to warrant release on bail pending appeal. He relied on Article 50 (2) entitled to fair hearing and right of appeal to higher Court as prescribed by law & 51 of *the Constitution*, those in prison retain their rights and fundamental freedoms.



59. The Appellant presented assorted medical documents to confirm his health status. They include Hospital Treatment Notes, Kenyatta National Hospital card. The letter from Nairobi Remand Prison Health Center dated 25/3/2025 confirms he suffered syncope (fainting attacks) low blood pressure, 1st degree heart block and septic shock and was admitted for 3 days at Kenyatta National Hospital and discharged and is maintained and monitored at the Nairobi Remand Sick bay. He is also under enlarged prostate management and has lost a lot of weight.
60. The Letter from Kenyatta National Hospital Medical report confirmed the Applicant was admitted on 17/5/2024 he complained of confusion general weakness on examination he was dehydrated, had hypertension and had a diagnosis of sepsis, and 3rd degree heart block and acute kidney injury.
61. By the time of discharge, the Applicant's recovery was remarkable, the hypertension, and sepsis had resolved and repeat ECG now showed 1st Degree AV block and acute kidney injury was resolving.
62. The Offence(s) the Applicant was charged with and went through criminal trial proceedings are multiple Counts of offences adversely affecting vulnerable members of society, the children who ought and are protected by;

Article 53 (d) of *the Constitution* that provides that [children] to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour; (2) A child's best interests are of paramount importance in every matter concerning the child.
63. The offences involved children who testified during trial culminating to Appellant serving sentence. The grant of bail or bond should include consideration of the safety and security of the witnesses/ children.
64. The Applicant's fixed abode, residence and means of livelihood are questionable, the Pleadings/ Affidavits strongly suggest connections in Kisumu, Eldoret Nairobi and Tanzania and travel to and from Netherlands to Kenya on various occasions.
65. The Pre-Bail Report dated 1/4/2025 disclosed that after conduct of various interviews the Applicant's fixed abode was not determined as he stays in hotels while on visit. Therefore, it is not established where the Applicant can be reached except through a close friend who acquired residential rental premises at Balozi Estate South B'.
66. The fact of the Appellant depositing the passport in Court does not rule out possibility of crossing border without requisite travel documents. The Pre-bail Report indicates that the Appellant is widely travelled Kenya, Tanzania, South Africa, Ghana, & Ivory Coast and this must mean he has close regional and international ties and contacts. In Kenya he travels on philanthropic works to Marsabit, Mombasa, Meru, Kisumu & Nairobi.
67. . The Pre-bail Report disclosed that the Appellant was apprehended at JKIA on his way out of the country when he was intercepted about to board flight and was detained and arraigned in Court for trial in the instant matter. He was granted bail/bond by the trial Court which the High Court later cancelled and he was in custody during trial.
68. From the above considerations I find that the circumstances are not exceptional since like other convicts the Applicant received medical attention within the prison facilities and when his health deteriorated he was rushed to Kenyatta National Hospital, admitted treated and discharged and he remarkably improved and is now kept in the Sick Bay as his condition is being managed.



69. The Applicant's age of 73 years coupled with medical condition are considered in determining the grant or refusal of bail/bond pending appeal but there are aggravating circumstances mainly the children who testified on particulars of the offences and this militates against the Applicant's grant of bail /bond. The Court in balancing rights of all parties and society the balance tilts towards protecting the victims.
70. The Appellant has not referred to any medical report to support the need for specialized treatment or that his situation cannot be managed within the current arrangement within the Prison establishment. I also find that there is no violation demonstrated during the period he has served since he received medical attention if and when required.
71. The right to liberty and freedom of movement is not derogable but may be limited under Article 24 of *the Constitution*. The fact that he is serving a lawful sentence following conviction permits that limitation and further liberty to access hospitals outside prison. This court is also not limited in orders that can facilitate that right where his interests are at stake.
72. His main concern is that he should be managed at home and should be able to enjoy liberty during the period of appeal. According to him, his situation will be appropriately managed at Balozi estate where he would reside with Laura Auma one who filed Supporting affidavit.
73. Further, Pre-bail report filed in this matter indicated that the victims are 7yrs & 8yrs old and that they are in the custody of their maternal aunt. The elder son is in Form 4. The mother, who filed Supporting Affidavit stated that the Appellant does not pose any harm to the children and the maternal aunt does not have any reservations for the Applicant's release on bail.
74. The Appellant shall stay with LA who is the victims' biological mother if the Appellant released. She is the one who has relocated from Kisumu and rented the house at Balozi estate. Therefore, the Appellant would be in contact the victims in/of criminal justice, it would expose children to more trauma and suffering considering the events narrated at the trial. Further, it would be a risk of interfering with the justice of the case in the event a retrial is ordered. The Court cannot guarantee the victims' safety and security in case of any eventuality.
75. . The issues are now on appeal, the nature of the case is that the Appellant was convicted of sexual violations against the victims who also testified against him. The Appellant was also convicted of online child pornography and amid other cybercrimes, it would be against the wider public interest to allow him back to the society until the appeal is resolved one way or another.
76. The ultimate orders are that the application for bond pending appeal lacks merit and is dismissed. The court will fast-track the appeal and expedite preparation of the Record of Appeal and hearing and determination of the Appeal.
77. . This Court at this stage it is premature to comment on whether the intended appeal has overwhelming chances of success in the absence of the Record of appeal filed, proceedings judgment and Pre-sentence Proceedings for this Court to make informed decision, one way or the other.
78. The Applicant also seeks preservation of digital evidence and all exhibits produce during trial. The Trial Court has discretion on how exhibits shall be handled during and after trial. Ordinarily exhibits should be returned after judgment or destroyed depending on the charges preferred.
79. However, where there is an appeal, all exhibits should be kept in safe custody until full determination. See the case of Simon Okoth Odhiambo –Vs- Republic [2005] eKLR where the Court of Appeal held that, ".... exhibits should never be released by court until it is satisfied that in the case of conviction, no



appeal has been preferred and if the appeal has been filed, such exhibits should only be released once the appeal has been heard and determined.”

Disposition

1. The Application for bail/bond pending Appeal is dismissed due to lack of Appellant’s fixed abode, residence and sufficient social contact business and/or source of funds; the close proximity with victims who have already testified and are vulnerable members of society -children ought to be protected from any possible harm, violence and this Court has to ensure their safety and security.
2. Although the Applicant/Appellant’s health is compromised and he requires special attention, inspite of marked improvement, management is required. Therefore, this Court orders the Prison Department to ensure proper care and attention, seclusion and appropriate treatment to manage the Appellant’s health and regular and prompt referral of the Appellant to Kenyatta National Hospital for checkups and treatment as required to maintain the Appellant’s health.
3. Deputy Registrar Criminal Division will engage CM’s Court/ Trial Court and fast track typing of Criminal Trial Proceedings Judgment and Pre-Sentence Proceedings and provide to parties and the date to be obtained on priority basis to hear and determine the Appeal on merit and timely.

**RULING DELIVERED SIGNED DATED & SIGNED IN OPEN COURT NAIROBI HIGH COURT
CRIMINAL DIVISION ON 15/5/2025 VIRTUALLY/PHYSICALLY.**

M.W. MUIGAI

JUDGE

