



REPUBLIC OF KENYA



KENYA LAW
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**Wanjiku v Director of Public Prosecution (Criminal Appeal
E050 of 2025) [2025] KEHC 8454 (KLR) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8454 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL APPEAL E050 OF 2025**

S MBUNGI, J

JUNE 16, 2025

BETWEEN

ANNE NYAGUTHI WANJIKU APPELLANT

AND

DIRECTOR OF PUBLIC PROSECUTION RESPONDENT

RULING

1. The appellant/applicant herein filed a notice of motion, dated 22nd May, 2025 under Certificate of Urgency brought under Sections 123(1), (2), and (3), 124 and 357 of the Criminal Procedure Code, as read with Article 49(1)(h) of the Constitution of Kenya, 2010, seeking to be admitted to bond pending the hearing and determination of this the present application and appeal.
2. The application was premised on the grounds on the face of it and supported by an affidavit sworn by one Kennedy Njoroge, the applicant's husband. It was stated that the applicant was charged with the offence of obtaining money by false pretences in the sum of Kshs. 190,000, which is a bailable offence.
3. He deponed that the appellant was arrested on 18th May, 2025 from her residence in Umoja Estate, Nairobi, and detained at Kangemi Police Station before being transferred to Kakamega Police Station. She was not arraigned immediately but only presented in court on 21st May, 2025 when she was allowed to take plea.
4. The deponent stated that the trial court denied the appellant bond and instead directed that a pre-bail report be prepared, ordering her remand at Kakamega Women's Prison pending her next appearance on 3rd June, 2025.
5. It was asserted that the appellant is a mother of two children, the younger being a five-year-old named MMN, who was born on 1st April, 2020, and who suffers from health complications requiring close and consistent maternal care. A birth certificate was annexed and marked as KN1. The deponent



- averred that the remand order failed to consider the special needs of the child, who had already been deprived of her mother's presence and care since 18th May, 2025.
6. He further stated that the trial court's decision would likely result in the appellant remaining in custody for an extended period given the current shortage of probation officers, thereby compounding the hardship on the child. The deponent expressed his willingness to post reasonable cash bail or surety on behalf of the appellant to secure her conditional release.
 7. It was further deponed that although the alleged offence was said to have occurred in Nairobi, the appellant was charged and arraigned in Kakamega without explanation, and that these jurisdictional concerns would be addressed during the proceedings.
 8. When the matter came up for hearing inter partes on 9th June, 2025, the applicant submitted that there was no compelling reason, or affidavit sworn by the DPP which would justify the denial of bail/bond pending the hearing and determination of the case before the lower court. She averred that she was not a flight risk and there was no evidence that she would interfere with witnesses.
 9. Prosecution counsel, Ms. Osoro, submitted that the application was overtaken by events since the supporting affidavit showed that the trial court had ordered for a pre-bail report before giving a ruling on bail on the 3rd June, 2025.
 10. Mr. Ashioya, counsel for the applicant countered this, stating that the appeal and instant application were lodged in this court before 03.06.2025. Further, he submitted that when the matter came up before the Hon. Chief Magistrate on 03.06.2025, he stated that the probation officer did not prepare the report sought because there was an appeal before the High Court, even though this Court did not stop the pre-bail report.
 11. Prosecution counsel submitted that the applicant's application and submissions were misleading, since it was unclear whether the application was based on the denial of bond by the lower court, or whether it was an application for review on the failure of the lower court to handle the matter. She prayed that the file be transferred back to the lower court for determination, and if aggrieved, the applicant/appellant could approach the court again with a proper application.

Analysis and Determination.

12. I have considered the application, the supporting affidavit, the oral submissions by counsels, and the lower court record.
13. The applicant seeks that this court be pleased to admit her to bond or bail pending the hearing and determination of her application and appeal.
14. From the lower court proceedings, when the matter came up on 21.05.2025 before Hon. J.M Wekesa (SPM), the learned trial magistrate ordered that a prebail report be filed to determine the accused's suitability for bond, that the accused be remanded at Kakamega GK Prison pending the pre-bail report and issued a mention date on the 03.06.2025 before the Hon. Chief Magistrate to confirm the filing of the pre-bail report.
15. When the matter came up before Hon. P. Mutua (CM) on the said date, the prosecution counsel confirmed to the court that a pre-bail report had been filed. However, the court could not issue directions on the same, since Mr. Ashioya, counsel for the accused informed the court that they had lodged an appeal before the High Court.
16. The purpose of a pre-bail report is to furnish the trial court with relevant information about the accused's background, community ties, likelihood of attending court, risk of absconding, and whether



release on bond would jeopardize the trial process. Section 123A(1) of the *Criminal Procedure Code* empowers the court to release an accused person on bond unless there are compelling reasons not to. The Bail and Bond Policy Guidelines, 2015 (paragraph 4.9) underscore the importance of pre-bail reports in assisting the court to exercise its discretion judiciously.

17. In the case of Republic v Lucy Ngendo Kamau [2015] eKLR, the High Court emphasized that pre-bail reports are particularly helpful where the court needs insight into the accused's family obligations, medical needs, or where there are concerns about the accused being a flight risk. Similarly, in Stephen Mwaniki Macharia v Republic [2018] eKLR, the court held that the trial court must be allowed to complete the bail assessment process before a higher court intervenes.
18. In this case, the trial court had already initiated the process and was awaiting the outcome of the pre-bail report when it was informed that the matter had moved to the High Court. The trial court cannot be faulted for requesting a pre-bail report before making its determination. The process was disrupted by the premature filing of the application before this Court, denying the trial court the opportunity to conclude the bail hearing.
19. This Court is of the view that the application for bail was prematurely filed. The lower court had not made a decision either granting or refusing bail. The trial court record also shows that a pre-bail report dated 3rd June 2025 was filed as per the orders of the court, and remains unconsidered. As such, the appropriate course of action is to refer the matter back to the trial court to consider and rule on the issue of bond.

Final Orders

20. The Notice of Motion dated 22nd May 2025 is struck out for being premature.
21. The matter is hereby referred back to the trial court for determination of the applicant's eligibility for bond/bail upon considering the pre-bail report filed on 3rd June 2025. Matter to be mentioned before the Duty Court on 17.06.2025 for further directions.
22. The trial court shall make its determination without undue delay and in compliance with Section 123A of the *Criminal Procedure Code* and the Bail and Bond Policy Guidelines.
23. This file marked as closed.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 16TH DAY OF JUNE, 2025

S.N MBUNGI

JUDGE

In the presence of :

Accused- present

Court Assistant – Elizabeth Angong'a

Court prosecutor- Ms Osoro.

Mr. Ashioya for the Applicant present online.

