



REPUBLIC OF KENYA



KENYA LAW
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**Ajanga v Republic (Criminal Appeal E044 of 2020)
[2025] KEHC 11505 (KLR) (28 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11505 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E044 OF 2020
DR KAVEDZA, J
JULY 28, 2025**

BETWEEN

RUEBEN AJANGA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for bail pending appeal from the conviction and sentence delivered by Hon. S. Temu (SPM) on 11th March 2025 at Kibera Chief Magistrate's Court, criminal case no. E025 of 2022 Republic v Reuben Ajanga)

RULING

1. The applicant was charged and, after a full trial, convicted for the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve thirty (30) years imprisonment.
2. Being dissatisfied with the decision, he filed a petition of appeal challenging his conviction and sentence. Simultaneously, he filed a notice of motion dated 20th March 2025, seeking his release on reasonable bail and/or bond pending the hearing and determination of his appeal. The application is premised on the grounds stated on its face, which are reiterated in the supporting affidavit sworn by the applicant's advocate of a similar date. They are that the appeal has overwhelming chances of success. He has a young family with minor children in need of care and protection. He undertakes to abide by any terms the court may impose.
3. The application was canvassed by way of oral submissions.
4. Dr. Khaminwa learned counsel for the applicant submitted that although the charges were clear and specific, the trial court's judgment deviated from the charge, which improperly influenced its reasoning. He argued that this irregularity was fatal to the conviction. Further, no doctor testified, and instead, a clinical officer gave evidence, which the counsel contends is incurable in law, citing *Thuo v*



- Republic No. 26 of 1987. He maintained that only a qualified doctor could give such medical evidence. He also submitted that the complainant's testimony lacked corroboration and that the clinical findings did not prove penetration. He urged the court to grant bail pending appeal.
5. Mr. Mutuma learned prosecution counsel submitted that the applicant had laid a basis that the appeal has high chances of success. He contended that indeed the order by the magistrate to have the doctor who filed the P3 form testify was not complied with.
 6. Having considered the application, the affidavit in support, and the applicable law, the issue for determination is whether the appellant has met the threshold for the grant of bail pending appeal.
 7. The provision of law that applies to bond/bail pending appeal is section 357 of the Criminal Procedure Code (Cap 75) Laws of Kenya, which provides as follows:
 - (1) After the entering of an appeal by a person entitled to appeal, the High Court, or the subordinate court which convicted or sentenced that person, may order that he be released on bail with or without sureties, or, if that person is not released on bail, shall at his request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal.
 8. The principles for granting bond pending an appeal were reiterated in the case of Jivraj Shah v Republic [1986] KLR 605 which laid down the principles as follows:
 - “(1) The principal consideration in an application for bond pending appeal is the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it is in the interest of justice to grant bail.
 - (2) 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 argued and that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail exists.
 - (3) The main criteria is that there is no difference between overwhelming chances of success and a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed, and the proper approach is the consideration of the particular circumstances and weight and relevance of the points to be argued.”
 9. In the case of Chimambai v Republic 1971 EA 343, J. Harris made another observation in such an application when he said;
 - “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.....”
 10. Under Article 49 of the Constitution of Kenya, 2010, an accused person who is facing a criminal charge has a right to bond/bail because he is presumed to be innocent till proven guilty, unlike a case where one is already convicted. In the cases cited above, the courts also held that an anticipated delay in the hearing of the appeal, together with other factors, may be grounds for the grant of bail pending appeal.



11. I have carefully examined the grounds of appeal raised by the applicant. The applicant states that the appeal herein has a high chance of success and one need only look at the judgment and petition of appeal to see that the trial court failed to rely on the full record of proceedings in writing the judgment.
12. The rationale for considering the chances of success of the appeal was stated in *Somo v Republic* [1972] EA 472 at page 480 as follows:

“There is little if any point in granting the application if the appeal is not thought to have an overwhelming chance of being successful, at least to the extent that the sentence will be interfered with so that the applicant will be granted his liberty by the appeal court. I have used the word “overwhelming” deliberately for what I believe to be good reason. It seems to me that when these applications are considered, it must never be forgotten that the presumption is that when the applicant was convicted, he was properly convicted. That is why, where he is undergoing a custodial sentence, he must demonstrate, if he wishes to anticipate the result of his appeal and secure his liberty forthwith, that there are exceptional or unusual circumstances in the case. That is why, when he relies on the ground that his appeal will prove successful, he must show that there is overwhelming probability that it will succeed.”
13. In this case, the application is grounded on the findings and facts established by the trial court. However, at this stage, the Court must be cautious not to try and determine the Appeal. That will be addressed at the appropriate time. While the applicant urges the Court to re-evaluate the evidence, as set out in *Okeno v Republic*, such assessment must await the hearing of the substantive appeal.
14. I have also considered all the seventeen grounds in the petition of appeal. In my view, they do not demonstrate that the appeal has overwhelming chances of success. The appellant may still advance these arguments at the hearing of the appeal. I am therefore not persuaded that the appeal is likely to succeed at this stage.
15. On alleged exceptional circumstances, the appellant claims to be the sole breadwinner for his young family. While his incarceration is unfortunate, this does not amount to an exceptional circumstance to justify his release on bail pending appeal. He is now a convicted person, and the presumption of innocence no longer applies.
16. This Court is actively handling appeals without undue delay. It is worth noting that had the appellant’s advocate filed written submissions on the substantive appeal, the Court would at this stage be delivering its judgment rather than issuing this ruling. Be that as it may, the Court assures the parties that the appeal shall be heard and determined expeditiously and without unnecessary delay.
17. In the premises, the application dated 20th March 2025 is therefore without merit and is dismissed.
Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 28TH DAY OF JULY 2025

D. KAVEDZA

JUDGE

