



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mutachi v Republic (Criminal Appeal E037 of 2023)  
[2024] KEHC 3020 (KLR) (11 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3020 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL APPEAL E037 OF 2023  
SC CHIRCHIR, J  
MARCH 11, 2024**

**BETWEEN**

**WYCLIFFE MUTACHI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. R.S. Kipngeno, Principal Magistrate, in Butali SPMCCRC No. E32 of 2018, delivered on 14th June, 2023)*

**RULING**

1. The Applicant, Wycliffe Mutachi was convicted by Principal Magistrate at Butali for the offence of rape and sentenced to 15 years in prison.
2. He was dissatisfied with the outcome, and petitioned for appeal. He also filed the present Application seeking to be admitted to bail pending appeal.
3. The Application is supported by the grounds appearing on the face of the application and on the supporting affidavit, both filed on 18<sup>th</sup> September, 2023.
4. It is the Applicant's case that his appeal is arguable; that he would suffer irreversible prejudice if the appeal succeeds after he has served considerable period of his sentence; that he may serve sentence before this appeal is disposed of. He further states that he fully complied with bond terms during trial and that he is not a flight risk.
5. The court gave direction that the application be canvassed by way of written submissions.

**Applicant's Submissions**

6. The applicant reiterated his averments as contained in the supporting affidavit. He adds that his right to liberty is constitutionally guaranteed and should not be taken away without justification. He further



submits that he enjoys the right to presumption of innocence pursuant to Article 50(2)(a) of the constitution.

7. The respondent did not file any submissions.

### **Determination**

8. The guiding principles on deciding on an application for bail pending Appeal was set out in the case of Jivraj Shah v Republic(1986) KLR 605 where the court stated:

“(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 .....” (3) That the sentence or substantial part of it – will have been served by the time the Appeal is heard, then, a condition of granting bail will exist”

9. The applicant has argued that his constitutional right to liberty and presumption of innocence should not be taken away. The argument is wrong on two grounds.

a). Firstly, his liberty was taken away on the basis of a conviction, arrived at by a court of competent jurisdiction. In the case of Mutua v Republic(1988) KLR 497 the court of Appeal held:

“It must be remembered that an applicant for bail has been convicted by a properly constituted court and is undergoing punishment because of that conviction which stands until it is set aside on appeal.”

b). Secondly, the right to presumption of innocence equally ended when he was found guilty. The presumption of innocence envisaged under Article 149 is only available to those undergoing trial, but once convicted, that right is lost.

10. Once a person has been convicted the bail is granted at the discretion of the court, not as a matter of right. Pursuant to the decision in Jivraj case(supra), the applicant must satisfy the court that there exist unusual and/or exceptional circumstances and the appeal must show chances of succeeding.

11. The applicant in this case has not made any attempt to show that there were unusual or exceptional circumstances to warrant bail. On the chances of appeal succeeding, I have perused the petition of appeal and I did not see any outstanding grounds, on which one can say prima facie, the trial court erred. I will not say more on this so as not to prejudice the appeal. The Appellant was sentenced to 15 years. I don't see his appeal pending for that long.

12. The applicant's conduct during trial and his family current circumstances are not relevant when considering an application of this nature ( Ref: Dominic karanja v Republic ( 1986) KLR 612).

13. In conclusion, I do not find any merit in this application and the same is hereby disallowed.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 11<sup>TH</sup> DAY OF MARCH, 2024**

**S. CHIRCHIR**

**JUDGE**

In the presence of:-



Godwin – Court Assistant

The Applicant

