



**Ithalie v Republic (Criminal Appeal E132 of 2023)
[2024] KEHC 4059 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4059 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E132 OF 2023
EM MURIITHI, J
APRIL 18, 2024**

BETWEEN

PETER ITHALIE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was convicted of grievous harm contrary to Section 234 of the Penal Code, and sentenced to 9 years imprisonment.
2. He has filed a notice of motion under certificate of urgency dated 3/8/2023 in this court seeking that –
 - “2) This Honorable Court be pleased to admit the Applicant/Appellant to bail pending the hearing of this Appeal.”
3. He contends that his appeal has overwhelming chances of success and he will have served a substantial part of his 9 year sentence before the appeal is heard and determined. He has been ill while in custody and he had no means of either bankrolling his advocate to file this appeal or contacting his family to seek the services of an advocate.
4. The application has not been responded to.

Determination

5. The principles to be considered in an application for bail pending appeal pursuant to the provisions of Sections 356 and 357 of the Criminal Procedure Code were set out in *Jivraj Shah v R* (1986) KLR



605 which considered earlier decisions of the Court and expounded on the factor of overwhelming chances of success and held as follows: -

“There is not a great deal of local authority on this matter and for our part such as we have seen and heard tends to support the view that the principal consideration is if there exist exceptional or unusual circumstances upon which this court can fairly conclude that it is in the interest of justice to grant bail. 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 urged, and that the sentence or a substantial part of it, will have been served by the time the appeal is heard, conditions for granting bail will exist. The decision in *Somo v Republic* (1972) EA 476 which was referred to by this court with approval in Criminal Application 5 No. NAI 14 of 1986, *Daniel Dominic Karanja v Republic* where the main criteria was stated to be the existence of overwhelming chances of success does not differ from a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed. The proper approach is the consideration of the particular circumstances and the weight and relevance of the points to be argued. It is almost self defeating to attempt to define phrases or to establish formulae.”

6. The Applicant was convicted on 28/2/2023 and sentenced on 22/3/2023. There is no likelihood that he will have served a substantial portion of the sentence before the appeal is heard and determined.
7. While the Applicant has alluded to the fact that he has been ill, he has not cited how his incarceration has impeded on his right to access the medical facilities available to inmates. After all, it appears that the Applicant was able to instruct an advocate to lodge the appeal on his behalf as the instant application and the petition of appeal were drawn and filed by Bebo & Mose Advocates.
8. The court finds that the Applicant has not shown any exceptional circumstances to warrant his release on bail pending appeal.

Orders

9. Accordingly for the reasons set out above, the Applicant’s application dated 3/8/2023 is without merit and it is dismissed.
10. However, the Applicant’s appeal will be heard on priority basis, in line with the holding in [*Thambura Leornard Mucui v Republic*](#) (2021) eKLR.

Order accordingly.

DATED AND DELIVERED THIS 18TH DAY OF APRIL, 2024.

EDWARD M. MURIITHI

JUDGE

APPEARANCES

Mr. Mose for the Applicant

Mr. Masila for the Respondent

