



**KCS alias K v Republic (Criminal Appeal E061 of 2024)
[2024] KEHC 9363 (KLR) (2 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 9363 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL APPEAL E061 OF 2024
AC BETT, J
AUGUST 2, 2024**

BETWEEN

KCS ALIAS K APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The appellant, KCS alias K was charged with the two counts of defilement contrary to Section 8 (1) as read with Section 8 (3) of the *Sexual Offences Act*. After the full trial, he was convicted of the offence upon being found guilty. He was sentenced to serve fifteen (15) years imprisonment.
2. Aggrieved by the decision of the learned Magistrate, the petitioner lodged a petition in which he urged the court to quash the conviction and set aside the sentence.
3. By a Notice of Motion dated 6th June 2024 and supported by his affidavit, the appellant applied to be released on bond pending appeal. The application was premised on the grounds that his continued incarceration would result in the loss of his job at the County Government of Kakamega. Secondly, the appellant averred that he suffers from acute psychosis, a mental condition requiring special attention which can only be provided by close family members.
4. When the matter came up for hearing on the 11th July 2021, Counsel for the respondent said that they had filed an affidavit in response to the application and they would not be filing written submissions. The respondent had filed an affidavit sworn by Loice Osoro, the Prosecution Counsel who averred that considering the fact that the appellant was suffering from mental disability, there are special circumstances that should be considered in exercising the discretion to grant him bond. Her position was that since the appellant had fulfilled and complied with all the terms of bond that were put by the trial court, the respondent was not opposed to the applicant’s application for bond pending appeal.



5. The court then reserved the ruling to 27th November 2024. The appellant was dissatisfied with what he considered a distant date for delivery of the ruling. He then filed another certificate of urgency dated 16th July 2024 in which he urged the court to order that he be moved from Kodiaga Prison to Kakamega Prison where he used to receive treatment for his mental condition. He therefore asked the court to review the orders made on 11th July 2024.
6. When the matter came up for directions on the certificate of urgency, this court certified the matter as not urgent, and issued the following orders:-
 1. That the application is not certified urgent.
 2. That the Officer-in-Charge, Kodiaga Prison is ordered to escort the Appellant/Prisoner to Jaramogi Odinga County Referral Hospital for treatment by a Psychiatrist.
 3. The Psychiatrist shall prepare a report to be filed in court within ten (10) days.
 4. Mention on 30/7/2024 for further directions.
 5. Respondent to be served of order dated 22nd July 2024.
7. In compliance with the court order, the Consultant Forensic Psychiatrist, Jaramogi Odinga Teaching and Referral Hospital filed a detailed report dated 28th July 2024. Dr. Arthur Owino stated as follows:-

“Based on my assessment of Mr. Shetty and the limited collateral documentary information available to me, it is my opinion that Mr. S is currently suffering with a mental disorder that requires treatment in a mental health hospital. He is currently detained in a prison environment, and it is unclear whether or not he is currently prescribed depot antipsychotic medication. Treatment in a mental health hospital would ensure that Mr. Shetty received appropriate medical treatment for his disorder...”

The Psychiatrists recommendation was that the appellant be admitted to a mental health hospital to receive treatment for his mental disorder to enable him recover and for a detailed psychiatric report to be prepared for the court.

8. On 30th July 2024, the parties appeared before the court and Ms. Chala for the respondent stated that they were not opposed to the appellant’s application to be released on bond pending appeal as they may be seeking an order for retrial. According to her, they had realized that an inquiry was not conducted into the appellant’s mental status before he was placed on his defence.
9. In his submissions, the appellant stated that a mental condition such as Acute Psychosis needs special attention and cannot be managed by a medical facility in a prison. He said that his condition is worsening because of his continued incarceration. In his affidavit, he averred that he was diagnosed with bipolar disorder in the year 2021 that later developed to Schizophrenia due to default in taking medicine and that he had been placed on a monthly injection and other medication.
10. I have carefully considered the appellant’s application which is not opposed. I have also scrutinized the medical documents from the Kakamega General Hospital and indeed they do reflect regular prescription of drugs for the management of mental illness. The appellant’s mental status was confirmed by the Consultant Psychiatrist who filed his report before this court.



11. The appellant is seeking directions from court on how he shall continue to receive treatment, care and protection as a person living with mental disability. He refers this court to the case of *BN v. Republic* [2019] eKLR which was a criminal revision.
12. Under the *Constitution*, the appellant, being a person under mental disability has a right to be treated with dignity and respect and to be treated equally like other people. He does not lose the fundamental right to a fair trial by being a person living with mental illness. In the Criminal Procedure Bench Book, it is stated that the courts must be guided by the principle of reasonable accommodation of persons with disabilities which requires “necessary and appropriate modification and adjustments to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others all the human rights and fundamental freedom” as required under the *UN Conventions on the Rights of Persons with Disabilities* which was ratified by Kenya on 19th May 2008.
13. A perusal of the record indicates that during his defence, the appellant raised the issue of his mental illness and denied having committed the offence as he was under treatment for acute psychosis at the time he was alleged to have committed the offence. The appellant produced treatment cards showing that he was a regular attendant of a mental health clinic. At this point, the court needed to caution itself of the necessity to ensure that the accused was receiving a fair trial notwithstanding the fact that his defence sounded coherent. However, the issue as to whether or not the appellant was accorded a fair trial shall be dealt with in detail at the hearing of the appeal.
14. For now, the court has confirmed that the appellant was out on bond during his trial. He faithfully observed the terms of the bond. In view of his current medical condition, the court finds that it is necessary for the appellant to be in an environment where he can access medical treatment for his condition. In light of the fact that the respondent is not opposed to the appellant’s release on bond, and considering the Psychiatrist’s report, I find that there are compelling reasons to release the appellant on bond to enable him access such treatment. This is because I have considered the recommendation by Psychiatrist wherefore he indicated that it would be helpful to gather more information from the appellant’s family regarding his past contact with mental health services. The appellant’s family, who live in Kakamega, would be best placed to do so. Committing the appellant to Mathare Mental Hospital which is far from his family may not be in the appellant’s interest therefore. In the premises, I hereby review and set aside the earlier order fixing the ruling on the appellant’s application for bail pending appeal to 27th September 2024.
15. The appellant’s application for bond pending appeal is hereby allowed on the following terms and conditions:-
 - (a) The appellant is admitted to a bond of Ksh. 300,000/= with two sureties of a similar amount.
 - (b) At least one of the sureties must be a member of the applicant’s family who shall undertake to ensure that the appellant is taken for medical treatment.
 - (c) The appellant shall within thirty (30) days of release, file a report as to his mental status and treatment from the Psychiatrist, Kakamega General Hospital.
 - (d) The respondent shall file any documents relevant to its intended application for revision within thirty (30) days from today.
16. The matter shall be mentioned on 27th September 2024 for further directions.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 2ND DAY OF AUGUST 2024.

A. C. BETT



JUDGE

In the presence of:

Appellant/Applicant in person

Ms. Chala for the Respondent

Court Assistant: Polycap

