



REPUBLIC OF KENYA



KENYA LAW
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**Njeri v Republic (Criminal Appeal E045 of 2022)
[2023] KEHC 600 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 600 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL APPEAL E045 OF 2022
MM KASANGO, J
FEBRUARY 9, 2023**

BETWEEN

EVANS WAGENDO NJERI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Evans Wangendo Njeri filed a notice of motion application dated August 8, 2022, seeking to be released on bail pending appeal.
2. He was convicted of the offence of forcible detainer contrary to section 91 of the *Penal Code* and was sentenced to imprisonment of 2 years. He has filed this appeal against conviction and sentence.
3. The law as provided under section 357 of the *Criminal Procedure Code* is that a convicted person who has filed an appeal may be released on bail pending the determination of the appeal. On being convicted however, a person seeking bail pending appeal lacks one of the strongest elements for granting bail, that is, the presumption of innocence. The courts however do take note that there are possibilities of convictions being erroneous: See the case *Chimambhai v Republic* 1971 EA 343.
4. The principles of granting bail pending appeal as held in the case *Jivraj Shah v Republic*[1986] eKLR are that the court should consider whether there exist exceptional circumstances justifying bail pending appeal being granted and also whether the appeal has overwhelming chances of success.
5. I confirmed that I have considered the trial court's proceedings and judgment. I have also considered the ground brought forth by the appellant in his application. Appellant has stated that his health is deteriorating while in custody due to pre-existing medical conditions. He also stated that he has discovered new evidence which will lead to success in his appeal.



6. In my view, the appeal before court on a *prima facie* basis does not disclose likelihood of success. Further, illness is not always a ground for granting bail. I am therefore of the view that the application for bail pending appeal is not meritorious.

Conclusion

7. The notice of motion dated August 8, 2022 is hereby dismissed.

RULING DATED AND DELIVERED AT KIAMBU THIS 9TH DAY OF FEBRUARY, 2023.

MARY KASANGO

JUDGE

In the presence of:-

Coram:

Court Assistant : Mourice/Julia

Evans Wangendo Njeri:-

For the applicant/appellant:- Ms. Nitia

Instructed by DPP for Respondent:- Mr. Gacharia

RULING delivered virtually.

MARY KASANGO

JUDGE

