



K v Republic (Criminal Appeal E154 of 2022) [2023] KEHC 1702 (KLR) (9 March 2023) (Ruling)

Neutral citation: [2023] KEHC 1702 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E154 OF 2022
TW CHERERE, J
MARCH 9, 2023**

BETWEEN

MK APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. MK (appellant/applicant) by a Notice of Motion dated December 09, 2022 has moved the court for orders that he be admitted to bail pending the hearing and determination of the appeal and for DNA testing to determine the paternity of the child of the defiled minor on grounds among others that he is not a flight risk and that paternity of the child of the defiled minor will determine whether eh defiled the minor.
2. Mr Masila, principla prosecution counsel opposed the application by way of Grounds of Opposition filed on January 30, 2023 and submitted that appellant has not demonstrated special circumstances that would entitle him to bond pending appeal.

Analysis and determination

3. I have carefully considered the application in the light of the affidavit on record and the response on behalf of the State and submission filed on behalf of the applicant.
4. Bail pending appeal is not a constitutional right, but a statutory right under section 356 *Criminal Procedure Code*. Thus at the time of considering bail pending appeal, the court has to bear in mind that the presumption of innocence is no more, as a conviction by a court of competent jurisdiction creates a presumption of guilt.
5. Courts have stated over and over again, that an applicant for bail pending appeal has to demonstrate unusual or exceptional circumstances, for such an application to succeed – See Jivraj Shah –vs- Republic (1986) KLR 605.



6. At this stage of the application, I am not required to finally determine the appeal. My duty is limited to determine whether the appellant has demonstrated any unusual or exceptional circumstances to show that his remaining in custody would be an injustice.
7. Merely relying on the grounds of appeal and alleging that the trial court failed to order for DNA test to ascertain paternity of the child of the defiled minor is not an unusual or exceptional circumstance that would persuade this court to release applicant/appellant on bail pending appeal.
8. I notice that the issue of paternity of the child of the defiled minor is the main ground of appeal. I decline to make any order concerning that issue and direct that it be argued in the appeal
9. Consequently, I find that the appellant/applicant who is convicted and is undergoing punishment because of that conviction has not passed the test for grant of bond pending appeal.
10. In the end, the Notice of Motion dated December 09, 2022 is considered and found to have no merit and it is disallowed.

DELIVERED IN MERU THIS 09th DAY OF March 2023

WAMAE T W CHERERE

JUDGE

Appearances

Court assistant - Kinoti

Appellant/Applicant - present

For the appellant/applicant - Mr Muthomi advocate

For the respondent - Mr Gitonga (PPC)

