



**Kimani v Republic (Criminal Appeal E092 of 2021)
[2023] KEHC 3642 (KLR) (2 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 3642 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL APPEAL E092 OF 2021
MM KASANGO, J
MAY 2, 2023**

BETWEEN

ERICK NGUGI KIMANI ACCUSED

AND

REPUBLIC RESPONDENT

RULING

1. Erick Ngugi Kimani, was convicted by the Thika Chief Magistrate’s Court with the offence of defilement contrary to Section 8(1)(2) of the *Sexual Offence Act*. He was aggrieved with his conviction and sentence and has filed this appeal. The appellant has moved this Court by his application dated 15th October, 2021 seeking that this Court does exercise its discretion in his favour, and does grant him bail pending appeal. The main grounds for the prayer sought is that the appellant has meritorious appeal and that because there is the likelihood of delay in concluding the hearing of the appeal, the bail pending appeal ought to be granted.
2. The application is opposed by Director of Public prosecutions on the basis that the appeal has no merit.
3. *Criminal Procedure Code* under Section 357(1) is the Section that provides the courts with discretion to grant bail pending appeal. That section provides:-

“After the entering of an appeal by a person entitled to appeal, the High Court, or the subordinate court which convicted or sentenced that person, may order that he be released on bail with or without sureties, or, if that person is not released on bail, shall at his request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal.”
4. The courts have set out the guideline for consideration when there is an application for bail pending appeal. That jurisprudence is that bail should be granted where there exist exceptional or unusual



circumstances upon which the court conclude it is in the interest of justice to grant bail; where it appears, the appeal is likely to be successful; and where the sentence or substantial part of the sentence will have been served by the time the appeal is heard: See the case of *Charles Owanga v. Director of Public Prosecutions* [2015] eKLR.

5. I have considered the submissions made by the appellant and the respondent. The appellant argued, without actual proof that he was a minor, when he was convicted and sentenced by the trial court. There being no proof of his age and because in his unsworn defence the appellant described himself as driver of car hire vehicles and because one must be an adult to drive a motor vehicle in Kenya, I reject the submission that the appellant was a minor.
6. I have also considered the proceedings before the trial court and the judgment of that court and on a prima facie basis I do not find the pending appeal does not have substantial chances of success. The appellant having been convicted and until that conviction and sentence is set aside, I am of the view bail pending appeal is not merited.

Disposition

7. The application dated 15th October 2021 is hereby declined and is dismissed.
8. The Deputy Registrar of this Court shall with urgent dispatch obtain the trial court' file to enable this appeal to proceed for hearing.

RULING DATED AND DELIVERED AT KIAMBU THIS 2ND DAY OF MAY, 2023.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Mourice/Julia

For appellant: - N/A

For DPP: - Mr. Gacharia

RULING delivered virtually.

MARY KASANGO

JUDGE

