



REPUBLIC OF KENYA



**Njenga v Republic (Criminal Appeal E021 of 2023)
[2023] KEHC 18647 (KLR) (5 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18647 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL APPEAL E021 OF 2023
RM MWONGO, J
JUNE 5, 2023**

BETWEEN

PATRICK NJENGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant/Appellant was convicted in the Lower Court for the offence of Stealing Contrary to Section 268 as read with Section 275 of the [Penal Code](#). He was sentenced to a fine of 30,000/= or in default 6 months imprisonment.
2. Dissatisfied he has appealed in to this court. In the meantime, on April 19, 2023 he filed an application for bail pending appeal.
3. The court directed that the application be served on the DPP who was directed to file his response. The court also directed that the Lower Court file be availed.
4. At the next mention on April 27, 2023, the Lower Court file had not been availed, nor had the DPP filed his response. The court directed a Probation Officers Pre-Bail report be filed as the Lower Court file was availed.
5. on May 3, 2023, the applicant was not produced in court and a Production Order was issued. On May 11, 2023 the court heard the bail application, wherein the applicant sought a cash bail of Kshs 5000/= . The state was given a final opportunity to file a response, the bail application not being one under Article 49 (1) (h) as the appellant is a convict. The state was also issued a notice to show cause why the applicant should not be released on bail.
6. On May 18, 2023 the DPP filed an affidavit by one Cpl W Wairimu No xxxx averring that the applicant had, since being imprisoned, issued several threats to witnesses who had testified against him



in Kerugoya CMCRC No E284 of 2022. Thus, it was asserted that the applicant ought not be released on bail pending appeal.

7. The applicant filed a replying affidavit on May 19, 2023 denying the allegations in CPL Wairimu's affidavit. He urged that there was no attached evidence demonstrating that the alleged victims of threats had reported to the police or any other authority. He stated that the claims on the said affidavit were unsubstantiated.
8. On May 23, 2023 the court received concluding arguments on the bail application and reserved its ruling for June 5, 2023. At that point the applicant's counsel indicated that it is likely that the applicant will pay the fine.
9. As indicated by counsel, the applicant paid the fine of Kshs 30,000/= the following day. I have seen the receipt thereof on the Lower Court file. I have also seen a Release Order dated May 24, 2023 by which the applicant was discharged upon payment of the fine as follows:

' The said prisoner may therefore be released in respect of this charge'.

10. Accordingly, the bail application has been overtaken by events and rendered otiose. Consequently, no orders, in respect thereof are made and the bond application is hereby marked as concluded.
11. Orders accordingly.

DATED AND SIGNED THIS 5TH DAY OF JUNE 2023.

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R. MWONGO

JUDGE

Delivered in the presence of:

1. Mamba for the State
2. Applicant present in Court
3. Heyi for Applicant
4. Court Assistant, Murage

