



**Kariuki v Republic (Miscellaneous Criminal Application
E046 of 2022) [2023] KEHC 21587 (KLR) (3 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21587 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CRIMINAL APPLICATION E046 OF 2022**

**PM MULWA, J
AUGUST 3, 2023**

BETWEEN

EVANS MATAHAKA KARIUKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By a notice of motion on November 8, 2022, the applicant seeks to be released on bail pending appeal, or in the alternative an order for suspension of execution of sentence imposed by the trial court pending the hearing of the appeal.
2. The gist of the application is that the applicant was charged and convicted in Thika Chief Magistrate's Court with the offence of defilement contrary to section 8(1)(2) of the *Sexual Offences Act* 2006 and sentenced to 20 years' imprisonment. The applicant avers that he has preferred an appeal which has an overwhelming chance of success. That he was a student at the time of arrest and any continued stay in custody will jeopardize his studies and by extension his future.
3. In support of the application the applicant deponed the affidavit attached hereto.
4. The court indulged the respondent on January 26, 2023, March 9, 2023, and June 5, 2023 by allowing it time to file and serve a response. When the matter came for mention on 20th June 2023 no response had been filed and the court observed that the respondent had been given sufficient time and proceeded to issue a ruling date.
5. Release of a convict on bail pending appeal is not absolute, the appellant should demonstrate to the court that indeed the appeal has a high chance of success and a substantial part of the sentence will have been served.



6. In *Dominic Karanja v Republic* (1986) KLR 612, the Court of Appeal laid down the following as pre-conditions for the grant of bail pending appeal:
 - a. The most important issue was that if the appeal had such overwhelming chances of success, there is no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances;
 - b. The previous good character of the applicant and the hardships if any facing his family were not exceptional or unusual factors. Ill-health per se would also not constitute an exceptional circumstance where there existed medical facilities for prisoners;
 - c. A solemn assertion by an applicant that he will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal;
 - d. Upon considering the relevant material in this case, there was no overwhelming chance of the appeal being successful.
7. The appellant has not attached the trial court file and thus this court has not heard the benefit of evaluating whether the appeal has a high chance of success.
8. The reasons advanced by the applicant are that he was a student at the time of arrest and any continued stay in custody will jeopardize his studies and by extension his future. However, this assertion does not present a case of unusual circumstances to warrant this court to exercise its discretion and issue bail pending appeal.
9. In the circumstances, therefore, this court is not convinced that the applicant has made out a case for issuing bail pending appeal.
10. In the alternative the appellant urged the court to stay the execution of the sentence. Staying execution of a sentence can only be achieved if a convict is released on bail pending appeal. The court having found the appellant is not entitled to bail pending appeal, the prayer for staying of execution of the judgment also fails.
11. The upshot, therefore, is the application filed on November 8, 2022 is without merit and the same is dismissed.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 3RD DAY OF AUGUST 2023.

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P.M. MULWA

JUDGE

In the presence of:

Duale – court assistant

Mr. Muriuki - for the Respondent

Applicant in person - present

