



**Mwikali & 2 others v Republic (Criminal Appeal E058 of 2021)
[2021] KEHC 279 (KLR) (18 November 2021) (Ruling)**

Neutral citation: [2021] KEHC 279 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL APPEAL E058 OF 2021
MW MUIGAI, J
NOVEMBER 18, 2021**

BETWEEN

FREIDANAH LUCY MWIKALI 1ST APPELLANT

JOEL MWENDWA 2ND APPELLANT

KELVIN WAMBUA 3RD APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Three Applicants/Appellants were jointly charged at Mavoko Chief Magistrate Courts before Hon. Onkwani (P.M) in Criminal Case No. 427 of 2018 , with an offence of causing Grievous Harm contrary to Section 234 of the [Penal Code](#) and were each convicted to serve a sentence of twenty (20) years imprisonment on 4/10/2021.
2. Aggrieved by the Sentence the Applicants/Appellants filed a petition of appeal dated 12th October, 2021 the appeal which is yet to be heard.

CERTIFICATE OF URGENCY

3. The Applicants/Appellants has filed an application dated 25th October, 2021 and filed in court on 26th October 2021 under certificate of urgency which application is grounded on the following grounds:-
 - (a) That the Applicants/Appellants are currently in custody having been convicted and sentenced by Hon. H. Onkwani (Principal Magistrate) inter alia for a sentence of twenty (20) years for the offence of Causing Grievous Harm contrary to Section 234 of the Penal Code.
 - (b) That the Applicants are not a flight risk and they have always been keen on attending the court sessions in order to clear their names from the impugned accusations.



- (c) That the Applicants are ready and more than willing to commit and abide to any terms or conditions that this Honourable court will set for their release from custody.
- (d) That the 1st Applicant is the sole bread winner, whose family, both immediate and extended, rely upon for financial support and motivation while the 2nd Applicant and 3rd Applicant are students at Kisii University and Co-operative University respectively (letters of admissions from Kisii University and Co-operative University annexed thereto) therefore, their imprisonment has hampered and shattered their future.

DETERMINATION:

4. The issue for consideration is of granting bond bending appeal.
The requirements for bail/bond pending appeal includes:
 - (a) The nature/of offence – Grievous Harms contrary to section 234 of the Penal Code
 - (b) The appeal has high chances of success.
 - (c) The special circumstances
 - (d) The conduct/character of the Appellants
 - (e) In the interest of justice.
5. This Court has considered the Bail and Bond Policy Guidelines March 2015;
The Pre-bail Reports of 18/11/2021 shows and confirms that the Appellants herein were consistent in Court attendance and did not jump bail bond during the trial proceedings until they were convicted and sentenced to custodial sentence. They are first offenders.
6. The 1st Appellant Fredinah Lucy Mwikali aged 44 years old is mother to Joel Mwendwa and Kelvin Wambua (2nd and 3rd Appellants) and sole breadwinner to them.
Joel Mwendwa aged 20 years is a student at Kisii University 3rd year Bachelor of Science, the Admission letter and admission number have been presented in court.
Kelvin Wambua is aged 19 years and is a 2nd year student at Co-operative University of Kenya pursuing a Diploma in Communications, Admission letter for Co-operative College is presented in Court.
7. The DPP/Prosecution Mr. Mwongera did not object to the application for granting bail pending appeal. The Investigating Officer from Mavoko is not opposed to release on bond terms.
8. The Probation/Pre-bail Report confirms that Local Administration is not opposed to the Appellants being granted bond.
9. The Court records confirms that the Complainant sustained serious injuries on the head, the 1st Appellant cut him with a rungu on the left side of the head and 2nd and 3rd Appellant hit him with the kitchen utensils. He was admitted in hospital for 3 weeks. He had pain and suffering and was immobile while on treatment and he incurred medical expenses.
His sister, Joyce Nduku who took care of the victim, stated that the victim developed speech and mental coordination from the injury. The Appellants are not a threat to them.
The victim's family is concerned about compensation of the costs they incurred during the victim's treatment and they are opposed to release on bail/bond based on the compensation issue.



10. The Pre-Bail Report confirms that the Appellants will not have contact with the complainant and will not be a threat to him.
11. The Court has considered that bail/bond is a Constitutional right taking into account any compelling and aggravating circumstances that may hinder bail/bond granted pending appeal.
12. The DPP Mr. Mwongera did not raise any objection to the application.
13. The 2nd and 3rd Appellants are young adults who are yet to continue with education. They have been consistent and abided with bond/bail terms during the trial proceedings and are not a flight risk. They are attending to education and shall ensure that they shall not interfere, harass or cajole the complainants and/or victim's family or associates.
14. The 1st Appellant is the mother to 2nd and 3rd Appellants and bread winner and is also not a flight risk and shall not interfere, harass or engage with the complainant.

DISPOSITION:

1. The appellants are granted cash bail of kshs.50,000/- each or bond of 100,000/ each pending appeal,
2. Directions of appeal to be taken within 30 days,
3. The appellants shall abide by the terms of bail/bond pending appeal and ensure that they attend court on all appeal hearing dates and determination,
4. The Appellants shall not interfere, harass or engage the complainant, family and/or friends during the hearing of the appeal.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 18TH DAY OF NOVEMBER 2021.

M.W MUIGAI

JUDGE

IN THE PRESENCE OF:

Mr. Oeri & Miss Kamande - for the Appellant

Mr. Mwongera - for the Respondent

Geoffrey - Court Assistant

