Mohamed v Republic (Criminal Case E040 of 2024)
[2025] KEHC 15145 (KLR) (24 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15145 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT GARSEN

CRIMINAL CASE E040 OF 2024

JN NJAGI, J

OCTOBER 24, 2025

BETWEEN

ABDULLAHI ADEN MOHAMED ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The applicant herein has filed an application dated 17th September 2024 seeking that he be admitted to bail pending the hearing and determination of the appeal pending herein.

2. The application is premised on grounds stated on the date of the application and supported by the affidavit of the applicant. The applicant says that he was convicted and sentenced to serve ten years imprisonment after being found guilty for the offence of attempted defilement contrary to Section 9(1) as read with Section 9(4) of *Sexual Offence Act*. He argues that the appeal has overwhelming chances of the success. That he is not a flight risk as he dutifully attended all sessions of his trial at the lover court.

   That owing to the exigencies of work at this court it is likely that he will have served a substantial part of the sentence imposed on him by the time the appeal is fully heard and determined with the result that he will suffer grave injustice in the event that his appeal will be successful.

3. The application was opposed by the respondent vide the replying affidavit of the Principal Prosecution Counsel Ms Agatha Mkongo on the grounds that the appeal has no chances of success. That bond given at the lower court served its purpose and the appellant was thereafter found guilty and convicted of the offence. That there are no peculiar and exceptional circumstances to warrant granting bail pending appeal. That the issue of the appellant not being a flight risk is irrelevant. That the application has no merit.

4. The application was canvassed by way of written submissions. Counsel for the applicant submitted that the power to admit an appellant to bail pending appeal is discretionally in nature. Reference

was made to the case of *Somo-V-Republic* (1972) EA476 which laid down three conditions for bond pending appeal, that:

1. The appeal must not be frivolous and must present arguable grounds.

2. The applicant must not be a flight risk.

3. There must be exceptional or unusual circumstances warranting the grant of bail.

5. It was submitted that the most important consideration in an application for bond pending appeal is whether the appeal has high chances of success to avoid instances where an innocent party may be unfairl punished, see *Daniel Dominic Karanja-V-Republic* (1986) eKLR. That in this case the appeal is likely to succeed on the grounds that the trial court shifted the burden of proof to the defence.

6. The applicant submitted that there will be delay in the hearing and determination of the appeal because until now the lower court's file has been not availed and proceedings are yet to be typed. That the delay coupled with the fact that his appeal has been admitted to hearing shows that the appeal is not frivolous. This has satisfied the limb of exceptional circumstance.

7. The applicant relied on the case of *Charles Owanja Aluoch-v-Director of Public Prosecutions* (2015) eKLR where the court cited the case of *Jivraj Shah v Republic* (1986) KLR 605 where the court laid down factors that may warrant grant of bail pending appeal as follows:

(1) existence of exceptional or unusual circumstances upon which the court can fairly conclude that it is in the interest of justice to grant bail.

(2) it appears *prima facie* from the totality of the circumstances that the appeal is likely to be successful on account of a substantial point of law to be urged and that the sentence or substantial part of it will have been served by the time the appeal is heard, then, a condition of granting bail will exist.

(3) main criteria is that there is no difference between overwhelming chances of success and set of circumstances which disclose substantial merit in the appeal – being allowed, the particular circumstances and weight and relevance of the points to be argued.

8. The applicant submitted that circumstances exist for grant of bail pending appeal.

9. The respondent on the other hand submitted that the grounds and circumstances when an application for bond pending appeal may be allowed are as was laid down in the above cited case of *Jivraj Shah-V-Republic* (1986) KLR 05.

10. The respondent also relied on the case of *Krishnan-v-the people* (SCZ 19 or 2011), (2011) ZM SC 17 where the following conditions were enumerated to be satisfied in an application for bond pending appeal:

i. Bail is granted at the discretion of the court.

ii. The court must be satisfied that there are exceptional circumstances that are disclosed in the application.

iii. The fact that the appellant due to delay in determining the appeal may have served a substantial part of his sentence by the time his appeal is heard, is one such exceptional circumstances. Each case is considered on its merits, depending on what may be presented as exceptional circumstances.

iv. It is important to bear in mind that in an application of bail pending appeal, the Court is dealing with a convict, and sufficient reasons must therefor exist before such a convict can be released on bail pending appeal.

v. It is not for the court to delve into the merits of each ground. But it suffices that all the grounds are examined, and a conclusion is made that prima facie the prospects of success of the appeal are dim.

vi. The fact that the applicant did not breach the bail conditions in the court below, is not an exceptional circumstance which can warrant to admit an application to bail; pending appeal.

11. It was submitted that the applicant has not demonstrated exceptional and peculiar circumstances that will move this court into granting the application. The fact that he did not breach bail terms at the trial court is not a special circumstance. That he has not demonstrated any issue to show that his appeal has high chances of success. That this court has been concluding appeals lodged before it expeditiously and thus the applicant will not suffer any harm if bail is denied.

12. It was further submitted that it is in the interest of justice that sentences imposed by competent courts be respected unless and until set aside by an appellate court. It was submitted that the application has not met the threshold for granting bond pending appeal. The respondent urged the court to dismiss the application.

Analysis and determination

13. I have considered the grounds in support of the application, the grounds in opposition thereto and the submissions by the respective counsels for the parties. The issue for determination is whether the application has met the threshold for granting bond pending appeal.

14. This Court has power under section 357 of the *Criminal Procedure Code* to grant bond pending appeal. The grounds in which the court may grant bond pending appeal has been well articulated in the submissions of the counsels for the appellant and the respondent. The conditions are well stated in the cases cited by the respective counsels for the parties. I have considered these authorities.

15. The most important consideration in an application for bond pending appeal are that the appeal has overwhelming chances of success on account of substantial point of law to be argued and that a substantial part of the sentence may have been served by the time the appeal is heard.

16. I have gone thought the judgment of the trial court and considered the grounds of appeal. I am not satisfied that the appellant has demonstrated that the appeal has overwhelming chances of success.

17. Additionally, I do not find exceptional circumstances to warrant the appellant being granted bond pending appeal. That the appellant is not a flight risk or that he was on bond at the lower court are not sufficient grounds for granting bond pending appeal. The hearing of the appeal can be expedited.

18. Consequently, I do not find any merit in the application and the same is dismissed.

19. I order that the appeal herein be expedited.

DELIVERED, DATED AND SIGNED AT GARSEN THIS 24TH OCTOBER 2025.

J. N. NJAGI

JUDGE

In the presence of:

N/A for Appellant

Mr. Oluoch for Respondent

Court Assistant – Ms. Rahma