



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kinoti v Republic (Criminal Appeal E055 of 2025)  
[2025] KEHC 16539 (KLR) (11 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16539 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL APPEAL E055 OF 2025  
SM GITHINJI, J  
NOVEMBER 11, 2025**

**BETWEEN**

**VINCENT KINOTI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Vincent Kinoti the Applicant herein was charged in the Lower Court with the offence of Defilement Contrary to Section 8(1) as read with Section 8(4) of the [Sexual Offences Act](#) No. 3 of 2006.
2. The particulars of the offence being that on the 4<sup>th</sup> day of January, 2024 a Ruiru Location, Buuri East Sub-County within Meru County, the Applicant intentionally caused his penis to penetrate the vagina of E.W.K, a child aged 16 years.
3. To the main count, there was an alternative count of committing an indecent Act with a child, Contrary to Section 11(1) of the [Sexual Offences Act](#) No. 3 of 2006. Upon full trial, he was found guilty of the offence in the main count, convicted and sentenced to serve 20 years imprisonment.
4. Dissatisfied with the said conviction and sentence, he appealed to this court vide Criminal Appeal No. E055 of 2025. He also brought up this application for Bail or Bond pending the hearing and determination of the Appeal.
5. The Application is based on the grounds that:-
  1. The Applicant has lodged a competent appeal against both conviction and sentence.
  2. The Appeal raises substantial questions of law and fact with high prospects of success.



3. The Applicant suffers from recurring medical condition –gastritis and convulsions –triggered by custodial conditions, including dietary limitation and early duty schedules, as confirmed by the attending clinician at Meru Teaching and Referral Hospital.
  4. Unless released on bond, the Applicant’s health will continue to deteriorate, and the appeal may be rendered nugatory due to irreversible harm.
  5. The Applicant was on bond throughout the trial and complied fully with all conditions imposed by the trial court.
  6. The Applicant is not a flight risk and has a fixed place of abode within the jurisdiction of the court.
  7. The Applicant suffers undue hardship while serving sentence before the appeal is heard.
  8. Unless admitted to bond, the appeal may be rendered nugatory should it succeed.
  9. The Applicant is willing to abide by any conditions the court may impose for release pending appeal.
6. The Respondent opposed the application and filed a Replying Affidavit sworn on 6<sup>th</sup> October, 2025. The grounds of opposition are that: -
1. The Application totally lacks merit and does not meet the legal requisite threshold of the orders that it seeks.
  2. The filed Appeal has no chances of success whatsoever as the evidence tendered by the prosecution was overwhelming, well corroborated and sufficient to warrant the conviction arrived at by the trial court.
  3. The Appellant/Applicant has not demonstrated that the prison facility is incapable of managing his medical condition. There is no evidence whatsoever that a special diet is unavailable in prison, that he has been assigned heavy duties, or that, despite presenting the medical report, the prison authorities has refused or failed to assign him lighter duties.
  4. The Appellant/Applicant has not demonstrated any peculiar and exceptional circumstances to warrant grant of the orders sought. The fact that the Appellant/Applicant has no prior Criminal record, pose no threat to anyone and is ready and willing to provide sureties and to attend court as required are not exceptional circumstances to warrant admission to bail pending appeal.
  5. Due to the nature of the offence the Appellant/Applicant is convicted of and the sentence imposed, the Appellant/Applicant chances of absconding are extremely high.
  6. Bail pending appeal is discretionary as the Appellant/Applicant innocence was compromised upon conviction and the prayer is for the Application to be dismissed.
7. The Application was canvassed by way of Written Submissions. The Applicant filed Submissions dated 17<sup>th</sup> October, 2025 while the Respondent simply relied on their Replying Affidavit.
8. Having considered the filed application, grounds relied upon and Submissions; as well as the Replying Affidavit in its opposition, I do find the issue of determination to be: Whether the Applicant has demonstrated sufficient grounds to warrant grant of bail/bond pending Appeal.



9. The law governing bail pending Appeal is Section 357(1) of the Criminal Procedure Code (Cap 75, Law of Kenya), which provides:-
10. 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 that the execution of the sentence or orders appealed against be suspended pending the hearing of his appeal.”
11. It is well understood that unlike bail pending trial, where an accused is presumed innocent, an Appellant has already been convicted and the presumption of innocence no longer applies. The burden therefore shifts to the Applicant to demonstrate that there exist exceptional or unusual circumstances justifying release pending appeal. These Principles were well stated in Somo –vs- Republic [1972] E.A 476, where the Court held:
12. Bail pending appeal may only be granted if there are exceptional or unusual circumstances. The most important ground is that the appeal has overwhelming chances of success. If it appears Prima facie that the appeal is likely to succeed, there is no justification for depriving the applicant of his liberty.”
13. In Jivraj Shah –vs- Republic [1986] KLR 605, the said principles were reaffirmed in that:
14. The principal consideration in an application for bail pending appeal is the existence of exceptional or unusual circumstances, and the likelihood of the appeal succeeding.”
15. The Applicant in this case has been convicted of a serious offence under the *Sexual Offences Act*, carrying a sentence of not less than 15 years imprisonment. The gravity of the offence and the sentence imposed, as well stated by the Respondent, are relevant factors in assessing the likelihood of absconding if released.
16. The Applicant claims that his appeal has high chances of success. However, he has not demonstrated prima facie errors of law or fact on the record that would indicate strong likelihood of success. Though I have looked at the record, at this interlocutory stage, the court cannot delve deeply into the merits of the appeal. No exception circumstances have been demonstrated. The Applicant’s condition can be addressed through a special diet on advice by a medical officer, as well as the appropriate duties he can be assigned to in prison.
17. While the Applicant was on bond during trial and attended all proceedings, the scenario has now changed and that alone does not constitute exceptional circumstance at the appeal stage, as the presumption of innocence no longer avails to him.
18. Having considered the foregoing, I do find that the Applicant has not demonstrated exceptional circumstances to justify release on bail/bond pending appeal. Accordingly, the Application is hereby dismissed.

**DATED AND DELIVERED AT MERU THIS 11<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**S.M. GITHINJI**

**JUDGE.**

Miss Kerubo holding brief for Mr. Mwenda for the Applicant/Appellant.

Applicant- Present at Meru Prison.

