



**Wanyoike v Republic (Criminal Application E263 of 2024)
[2025] KECA 1939 (KLR) (21 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1939 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CRIMINAL APPLICATION E263 OF 2024
PO KIAGE, AO MUCHELULE & WK KORIR, JJA
NOVEMBER 21, 2025**

BETWEEN

BRIAN WANYOIKE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Brian Wanyoike, was convicted under section 8(1) and (4) of the *Sexual Offences Act* of defilement by the Senior Principal Magistrate's Court at Kibera and sentenced to 15 years imprisonment on 28th November 2023. The particulars of the offence were that on 24th May 2021 at [Particulars withheld] Apartments Kileleshwa in Westlands in Nairobi County, he intentionally and unlawfully caused his penis to penetrate the vagina/anus of DWN, a child aged 16 years and 7 months. He was aggrieved by the conviction and sentence, and appealed to the High Court at Kibera. The appeal was found to be unmerited in a judgment delivered on 10th June 2024.
2. The applicant, still not satisfied, appealed to this Court through a petition dated 18th July 2024. This was followed by a notice of motion under Rule 5(2)(a) of the Rules of this Court, asking to be admitted to bail pending the hearing and determination of his appeal. The primary grounds contained in his application were that his appeal was based on strong grounds with a reasonable prospect of success; he was on bond during trial and therefore there is no risk of him absconding; he feels that, given the case backlog in this Court, he may serve a substantial part of his sentence before the appeal is heard and determined; and that he was a student at KRA School of Revenue Administration and cries for an opportunity to continue with his training while awaiting the resolution of his appeal.
3. The grounds of his appeal were that, there were significant inconsistencies in the evidence presented during his trial; there was questionable interpretation of the medical evidence upon which he was convicted; and there was potential misapplication of legal principles regarding mens rea and the presumption of age defence.



4. During trial, the applicant admitted that he had sexual intercourse with the complainant, but stated that, from her conduct, he believed she was an adult; that she appeared to be roughly 23 years of age, and handled alcohol well.
5. We note that the application was conceded by the State which was represented by learned counsel Mr. Omondi, a senior Assistant Deputy Public Prosecutor. Counsel submitted that the applicant was a second-year student at the college and had lost a lot of time owing to the incarceration; that he was yearning for getting back to college and to be able to reintegrate.
6. Learned counsel, Mr. Keter, appeared for the applicant. While referring us to the decisions in *Jivraj Shah -vs- Republic* [1986] KLR 605 and *Daniel Dominic Karanja -vs- Republic* [1986] eKLR, learned counsel submitted that his client’s appeal has strong grounds with reasonable chances of success; the applicant was of good character with low flight risk; and was willing to comply with any bail terms that will be imposed.
7. We have considered the application and what learned counsel have told us on the same. While we appreciate the applicant’s contention that his appeal has strong grounds with reasonable prospects of success, we reiterate, and this is supported by the authorities his counsel cited to us, that what has to be demonstrated is that his appeal has such overwhelming chances of success that there is no justification for depriving him his liberty while awaiting the hearing and determination of the appeal. The requirement is this onerous because of the presumption at this stage that the applicant was properly convicted and sentenced. It is only under exceptional circumstances that he can be released on bail at this stage.
8. The fact that the applicant was on bail during trial, or that he was college-going at the time of his conviction and sentence are relevant considerations, but, they alone, would not make the applicant’s notice of motion an exceptional occasion for his release on bail.
9. We have considered the concession by the State on the question of bail. However, given the facts that this application has presented, we decline to release the applicant on bail. We instead direct that this appeal be urgently processed, heard and determined during the next term of Court.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF NOVEMBER 2025.

P. O. KIAGE

.....

JUDGE OF APPEAL

A.O. MUCHELULE

.....

JUDGE OF APPEAL

W. KORIR

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

