



REPUBLIC OF KENYA



KENYA LAW
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**Muchiri v Republic (Criminal Appeal 30 of 2025)
[2025] KEHC 18101 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 18101 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL APPEAL 30 OF 2025
EM MURIITHI, J
NOVEMBER 27, 2025**

BETWEEN

JACKSON MUREITHI MUCHIRI APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant filed the Notice of Motion dated 29th April, 2025 seeking the following order:
 1. That the Appellant be released on bond/bail pending the hearing and determination of the appeal herein.
2. The application is based on the grounds on the face of the application and the supporting affidavit of Lilian Wambura Magu setting out the the applicant’s case that on 13th March, 2025 was sentence to life imprisonment for defilement of a 7-year-old boy child. He is serving his prison sentence at King’ong’o Prison Nyeri. He was not satisfied with the conviction and sentence of life imprisonment hence the present appeal.
3. Further, she avers that the Appellant/Applicant’s appeal has got high chances of success hence he prays that he be released on bail/bond pending determination of the appeal herein. Lastly, she avers that as the Applicant’s mother she shall ensure the Applicant is present in court wherever needed and he shall abide by the terms and conditions of this honourable Court pending the hearing of the appeal herein.
4. The respondent on 22nd October, 2025 deposed to a Replying Affidavit averring that the court could be pleased to admit the applicant to bail pending the hearing and determination of his appeal, yet by submissions dated 22/1/0/2025 oppose the application by urging that:

“The Prosecution was able to prove all elements of defilement.



We submit that the Appellant/Applicant was granted a fair hearing during trial stage as required by Article 50 of *the Constitution* of Kenya 2010 and was Convicted and sentenced on the strength of the prosecution evidence as such his appeal has no overwhelming chances of success.

We submit further that the general principles which guide the Court in granting and/or denying bail or Bond where the rights of presumption of innocence until proved guilty were delt at the trial Court hence rights of liberty if the applicant versus the rights of the victims should be weighed as the verdict has been rendered.

The Appellant/Applicant has not demonstrated that exceptional or unusual circumstance exists to grant bail pending appeal. We submit further that trial Court was wholly persuaded by the age of the Minor, the sentence the offence carries and the offender being the perpetrator who stole the minor's innocence at a tender age.

We submit that the Appellant/Applicant was convicted and Sentenced by a properly constituted Court and must challenge the same at the Appeal which if the Appeal succeeds, the sentence will be interfered with as the Appellant/ Applicant will be granted his liberty by the Appeal Court.”

Issue

5. Upon considering the application, affidavits and submissions before the Court, the arising for consideration is whether the Appellant should be released on bond/bail pending the hearing and determination of the appeal herein.

Analysis

6. Section 357(1) of the Criminal Procedure Code, Cap 75 Laws of Kenya, provides:

“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 pending the hearing of his appeal.”

7. Thus, the grant of bail pending appeal is discretionary and must be exercised judiciously, guided by established principles.
8. This principle has been reiterated in *Jivraj Shah v Republic* [1986] KLR 605, where the Court of Appeal observed:

“The principal consideration in an application for bail pending appeal is the existence of exceptional or unusual circumstances. The likelihood of success of the appeal is also a major factor to consider.”

9. The Appellant has been convicted of defilement of a 7-year-old child and sentenced to life imprisonment. The offence is grave, and the sentence imposed is statutorily severe, reflecting society's condemnation of such acts.
10. While the Appellant asserts that the appeal has high chances of success, no submissions or evidence have been placed before this Court to demonstrate such overwhelming prospects. This Court at this interlocutory stage, cannot delve into the merits of the appeal without the benefit of the full record of proceedings and the grounds of appeal being substantively argued.



11. Further, the Appellant has not demonstrated any exceptional or unusual circumstances that would justify her release pending appeal. Hardship to family, long period of incarceration, or mere assertion of innocence do not constitute exceptional circumstances as established in *Daniel Dominic Karanja v Republic* [1986] KLR 612, where the Court of Appeal held that:

“The most important issue is whether the appeal has such overwhelming chances of success that there is no justification for depriving the applicant of his liberty. The existence of exceptional or unusual circumstances will justify the grant of bail pending appeal.”

12. The offence herein involves a vulnerable minor, and the trial court having duly convicted after full trial, the presumption of innocence no longer applies. The Appellant is now serving a lawful sentence until such time that the appeal may be determined. The appellant does not disclose the points of law and or fact by which he relies on to contend that the appeal has high chances of success, other than a statement by on the grounds of the application that “the appellant was barely of legal age at the time of his arrest and alleged commission of the said crime.”

13. In the absence of demonstrated exceptional circumstances or a strong likelihood of success in the pending appeal, this Court finds no basis to exercise its discretion in favour of the Appellant.

Orders

14. Accordingly, for the reasons set out above, the Court that there are no exceptional circumstances to warrant the grant of the application grant of bail pending appeal.

15. The circumstances of the case, including admitted young age of the applicant and his family relations with the victim’s family do, however, call for expedited hearing and determination of the appeal and, consequently, the Court directs the appellant to file his submissions within thirty (30) days and the DPP to file submissions on the appeal thirty (30) days after service.

16. Directions as to judgment on the appeal shall be taken on 2/2/2026.

Order accordingly.

DATED AND DELIVERED THIS 27TH DAY OF NOVEMBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Ombachi for Appellant.

Mr. Mamba for DPP.

