



REPUBLIC OF KENYA



KENYA LAW
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**Solo v Republic (Criminal Appeal E030 of 2025)
[2025] KEHC 17703 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17703 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL APPEAL E030 OF 2025
WM KAGENDO., J
NOVEMBER 27, 2025**

BETWEEN

NICKSON ALEX SOLO APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the judgement of Honourable D.Odhiambo in
Mombasa Criminal Sexual Offence case number E165 of 2021 Rep vs
Nickson Alex Solo Delivered at Mombasa on the 26th February 2025)*

RULING

1. By a Notice of Motion dated 20th May 2025 brought under Article 50 (2) (q) of *the Constitution* of Kenya 2010 and Section 357 of the CPC, the appellant moved this court for orders:
2. Spent
3. That the Honourable Court be pleased to order that the appellant herein who has appealed against his conviction and sentence, be released on bail with or without sureties pending the hearing and determination of this appeal.
4. That alternatively, the Honourable court be pleased to order that the execution of the sentence appealed against be suspended pending the hearing and determination of this appeal.
5. That the court at its own discretion be pleased to grant any other order that it deems fit and just to grant for the interest of justice.
6. The application is propped by the grounds on its face and the affidavit of Nickson Alex Solo sworn on 20th May 2025.



7. He states that he was charged with the offence of defilement contrary to Section 8 (1) as read with Section 8 (4) of the *Sexual Offences Act* and with an alternative charge of indecent act with a child contrary to section 11 (1) of the *Sexual Offences act*. The applicant was subsequently convicted and sentenced to 15 years' imprisonment which he has since appealed and now prays for bond/bail pending appeal.
8. I have considered the application filed, the affidavit in support and the submissions on record. The issue for consideration is whether the application has merit and what orders this court should make.
9. Article 50 (2) (q) of *the Constitution* of Kenya provides:

“Fair hearing.

50.

(1)

(2) Every accused person has the right to a fair trial, which includes the right—

(q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
10. The provisions of Section 357 (1) of the Criminal Procedure Code provide for admission to bail pending appeal in the following terms;

“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, if that person is not released on bail, shall at his request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal.”
11. In the case of Charles Owanga Aluoch vs Director of Public Prosecutions (2015) it was held that: -

“After conviction that right is at the court’s discretion and upon considering the circumstances of the application. The courts have over the years formulated several principles and guidelines upon which bail pending appeal is anchored.

In the case of Jiv Raji Shah v R [1966] KLR 605, the principle considerations for granting bail pending appeal were stated as follows:

“(1) The principal consideration in an application for bond pending appeal is the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it is in the interest of justice to grant bail.
12. If it appears prima face from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be argued and that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail exists.
13. The main criteria is that there is no difference between overwhelming chances of success and a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed and the proper approach is the consideration of the particular circumstances and weight and relevance of the points to be argued.”



14. Instantly, as earlier noted the applicant was charged with the offence of defilement contrary to Section 8(1) as read with Section 8 (4) of the *Sexual Offences Act* with an alternative charge of indecent act with a child contrary to Section 11 (1) of the Act. The particulars of the charges are that on diverse dates between the year 2017 and 2021 at [Particulars Withheld] in Mvita sub- county within Mombasa County, the appellant intentionally and unlawfully committed an act which caused his penis to penetrate the anus of a male child namely B.O a child aged 15 years, or alternatively intentionally and unlawfully caused his penis to touch the anus of the said child. After trial he was found guilty on the main charge and sentenced to 15 years imprisonment.
15. As grounds for his application pending appeal, the applicant argues that he has an arguable appeal with high chances of success. That he is ready to furnish sureties and fulfil the conditions of the cognizance that the court may impose and he will observe the conditions of the bond.
16. It is worth noting that the respondent was not opposed to the instant application.
17. In the case of *Jiv Raji Shah v R* [1966] KLR 605, the Court of Appeal addressed itself on the parameters to be considered by appellate courts in an application for bail pending appeal that:
 - “(1) The principal consideration in an application for bond pending appeal is the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it is in the interest of justice to grant bail.
 2. If it appears prima face from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be argued and that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail exists.
 3. The main criteria is that there is no difference between overwhelming chances of success and a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed and the proper approach is the consideration of the particular circumstances and weight and relevance of the points to be argued.”
18. On the aspect of demonstration of exceptional or unusual circumstances, the court observes that, the appellant has not demonstrated any unusual or exceptional circumstances to warrant the grant of bond pending appeal. The averments that the charge sheet was defective, the applicant’s testimony was disregarded or that the defilement is not real as the main dispute between the parties is a land dispute are not exceptional or unusual circumstances as highlighted above.
19. For what it is worth, at the trial Court the appellant was simply an accused person entitled to his constitutional right of presumption of his innocence until proven guilty. In the instant matter he is a convict serving 15 years’ imprisonment.
20. As to the prima facie likelihood of the success of the appeal, there is little to go by. In my view, in an application for bail pending appeal, the burden weighing against the applicant is to demonstrate to the court through the grounds of appeal set by the petition, that the prima facie has an overwhelming chance of success and not to simply allude out of his opinion of high chances of success of the appeal. This court has considered the grounds set out in the petition of appeal and cautious not to delve deep into the merits of the matter at this stage. Save for the usual grounds of appeal, nothing is deducible on account of some substantial point of law towards an overwhelming chance of success of the appeal.



21. I further note that the applicant was convicted on 26th February 2025 it cannot be said that by the time the appeal is heard and determined he will have served a substantial part of the term of sentence which may be irreversible and a great punishment, should the appeal be successful.
22. In the foregoing, the application fails to the extent held hereinabove. The hearing of the Appeal shall be expedited.

Meeting on 16/12/2025 before the Deputy Registry for Record of Appeal

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 27TH DAY OF NOVEMBER 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

WENDY KAGENDO MICHENI

JUDGE

In the presence of;-

Ms. Kembe For Mr. Opwapo For The Applicant

Respondent Mr Sirima

Court Assistant Beboru

