



REPUBLIC OF KENYA



KENYA LAW
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**Muthike v Republic (Criminal Appeal E051 of 2025)
[2025] KEHC 18936 (KLR) (15 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18936 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL APPEAL E051 OF 2025
EM MURIITHI, J
DECEMBER 15, 2025**

BETWEEN

JOSEPH MURIITHI MUTHIKE APPELLANT

AND

THE REPUBLIC RESPONDENT

*(Being an appeal from original conviction and sentence in Wanguru
Principal Magistrate's Court Criminal case sexual Offence No. E025
of 2023 delivered on 3/9/2025 before the Hon. Martha Opanga (PM))*

RULING

1. The appellant was convicted for the offence of defilement contrary to section 8(1) (4) of the [Sexual offences act](#) and sentenced to imprisonment for 15 years on 3/9/2025.
2. The appellant seeks release on bail pending appeal on the grounds that his appeal has “high chances of success” and that he is “also in bad health as I am on medication for various illnesses and the stress in the Prison is making me very unwell and aggravating my condition”, and that he has “never ever jumped bail.”
3. The principles for the grant of bail pending appeal are well settled that the appellant must demonstrate exceptional circumstances, such as overwhelming chances of success of the appeal; that the applicant will have served a substantial portion of the sentence by the time the appeal is heard and determined; that the applicant’s health needs are not capable of being attended to by the Prison health facilities; but that the appellant’s previous good character is not an exceptional circumstances.



4. See *Jivraj Shah v. R*; *Somo v. R*; *Mutua v. R*; and *Karanja v. R*, discussed by this court in *Boke Chacha v Republic* [2013] KEHC 5818 (KLR) setting out the principles as follows:

“ 4. According to authorities on bail pending appeal, bearing in mind that the applicant has now been convicted by a competent court and is on punishment for the conviction which stands until it is set aside on appeal, the criteria for consideration is:

- a. Whether there exists exception or unusual circumstances which justify grant of bail in interests of justice. See *Jivraj Shah v. R* (1986) KLR 605.
- b. Such exceptional circumstances exist where the appeal has overwhelming chances of success or where a set of circumstances exist which disclose substantial merit in the appeal and that the sentence or a substantial part of it will have been served by the time the appeal is heard. See *Jivraj Shah supra*; *Mutua v. R* (1988) KLR 497; and *Somo v. R* (1972) E.A 476.
- c. The previous good character of the applicant and the hardships facing his family, and his ill health, where there existed prison medical facilities for prisoners, are not exceptional or unusual circumstances. See *Dominic Karanja v. R* (1986) KLR 612.
- d. A solemn assertion, even if supported by sureties, that the applicant will not abscond if released is not sufficient ground for releasing a convicted person on bail pending appeal. See *Dominic Karanja, supra*.”

5. In this case, the applicant is serving sentence of imprisonment for 15 years and there is no chance that he will have served a substantial portion of his sentence by the time is heard and determined.

6. The alleged ill health of the applicant has not been demonstrated by any medical evidence from the applicant’s doctor or prison doctor stating that the prison health facilities complete with referral facilities to the relevant level 5 hospitals are not able to treat and or manage the applicant’s health needs, as the case may be.

7. The applicant has upon conviction by the trial court, lost his presumption of innocence, and the appropriate order is for the hearing of the appeal as the Court is, in the circumstances of this case, not able to determine at this stage that the appeal as shown in the Petition of Appeal has an overwhelming chance of success as to amount to an exceptional circumstance.

Orders

8. Accordingly, for the reasons set out above, the application for bail pending appeal is declined and order that commends itself to the Court is an order for expedited hearing of the appeal.

9. The Court notes that the Record of Appeal is ready and the trial court file has been availed and the directions as to hearing may be taken.

10. Consequently, the Court directs that the appellant shall file his submissions within thirty (30 days) and the DPP shall file submissions in reply within a similar period, and proceedings for the highlighting of the submissions and Judgment shall be taken on a date to be fixed in the next term of the Court.



Order accordingly.

DATED AND DELIVERED THIS 15TH DAY OF DECEMBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mamba for the DPP.

Ms. A. Thungu for the Applicant.

