



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRA/E078/2025

HENRY LEZZEN MWASHUMBE VS THE REPUBLIC

RULING

1. The appellant, Henry Lezzel Mwashumbe, by Notice of Motion dated 1 October 2025, moves this Court for the following orders:
 - i. That this Honourable Court admit and/or grant the applicant bail/bond pending the hearing and determination of this application;
 - ii. That this Honourable Court admit the applicant on bail/bond pending the hearing and determination of the intended appeal;
 - iii. Costs of this application to be in the cause.
2. The application is supported by the grounds stated on its face and by the affidavit of Muthuri Kinyua, an Advocate of the High Court of Kenya having conduct of the instant appeal on behalf of the appellant.
3. In his affidavit the deponent states that the appellant was convicted on false testimony and evidence of the complainant. The deponent further states that the complainant swore an affidavit dated 11 August 2025 in which she avers that she was beaten, locked up and forced to incriminate the appellant.
4. The said affidavit, sworn on 11 August 2025 by Faith Kanini Peter, is annexed in support. In it the deponent avers that she has known Henry since 2021; that they were friends; that she visited his home on the material night and arrived at about 2200 hours and left at about 0600 hours; that although there was mutual liking, no sexual intercourse occurred. She avers that she was thereafter taken to Likoni Police Station, detained for five days, and coerced to record a statement that was subsequently used in court to convict the appellant.
5. The State opposed the application by Grounds of Opposition dated 9 October 2025. The State



contends that bail pending appeal is discretionary and that the appellant's innocence has been compromised by conviction. The State further submits that this Court should not determine issues of evidential weight at this interlocutory stage, as such issues will be addressed on the hearing of the main appeal.

6. Both parties filed written submissions which I have considered.

Analysis and Determination

7. Section 357(1) of the Criminal Procedure Code provides for admission to bail pending appeal as follows:

"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."

8. Article 49(1)(h) of the Constitution provides that an accused person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial unless there are compelling reasons not to be released. A similar presumption in favour of release does not automatically apply to a person already convicted.

9. In *Charles Owanga Aluoch v. Director of Public Prosecutions* (2015) ECLR it was observed that after conviction the grant of bail is a matter for the court's discretion and depends on the circumstances of the application. The courts have formulated principles and guidelines upon which bail pending appeal is anchored.

10. In *Jivraj Shah v. Republic* (1966) KLR 605 (referred to in subsequent authorities) the Court of Appeal set out principal considerations for granting bail pending appeal:

(a) The principal consideration is the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it is in the interests of justice to grant bail pending appeal.

(b) If it appears prima facie from the totality of the circumstances that the appeal is likely to succeed on account of some substantial point of law to be argued and that the sentence, or a substantial part of it, will have been served by the time the appeal is heard, conditions for granting bail may exist.

11. In the present case the appellant was convicted of defilement contrary to section 8(1) read with section 8(3) of the Sexual Offences Act and sentenced to 20 years' imprisonment. The appellant's primary complaint at this stage is that the conviction was founded on false testimony and evidence of the complainant.

12. On the question of exceptional or unusual circumstances, the Court finds that the appellant has not demonstrated circumstances of the requisite exceptional or unusual character. The allegation that the conviction was based on false testimony, without more, does not in itself constitute the exceptional circumstances contemplated by the authorities.

13. As to a prima facie likelihood of success on appeal, the applicant bears the onus of demonstrating at this interlocutory stage that there is a substantial point of law or that the appeal



has sufficient merit to warrant release. Having considered the grounds of appeal as set out in the petition, and being careful not to delve into the merits of the substantive appeal, I find no material from which it can be concluded that the appeal is prima facie likely to succeed on a substantial point of law.

14. Furthermore, noting that the appellant was sentenced to 20 years' imprisonment on 10 June 2025, it is unlikely that he will have served a substantial portion of the sentence by the time the appeal is heard and determined. This factor weighs against the grant of bail pending appeal.

15. In the circumstances, the application for bail pending appeal fails.

16. The Registrar is directed to expedite the hearing of the appeal.

DELIVERED, DATED AND SIGNED at MOMBASA this 25th day of FEBRUARY, 2026.
Ruling delivered through Microsoft Teams Online Platform.

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2026-02-27 17:54:20

