



**Muli v Republic (Criminal Appeal E005 of 2026)
[2026] KEHC 5589 (KLR) (22 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5589 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL APPEAL E005 OF 2026
JN ONYIEGO, J
APRIL 22, 2026**

BETWEEN

BONIFACE KIOKO MULI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Introduction

1. The Applicant was charged with the offence of Defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*, Cap 63A of the Laws of Kenya. The particulars were that; on the 22nd day of September 2024 at around 1600hrs at Mutitu Sub-Location in Mbooni West Sub-County within Makueni County, he intentionally and unlawfully caused his genital organ namely penis to penetrate the genital organ namely vagina of C.M.M, a girl child aged 6 years.
2. He was also charged with an alternative charge of committing an indecent Act with a child contrary to Section 11(1) of the *Sexual Offences Act*, Cap 63A of the Laws of Kenya. The particulars were that on the same day, time and place, he intentionally did an indecent act to C.M.M, a girl child aged 6 years by touching her private parts namely vagina with his penis.
3. Having denied the charge, the matter proceeded to full trial with the prosecution calling a total of 5 witnesses. Consequently, he was acquitted of the main count and convicted of the alternative count to which he was sentenced to serve ten years imprisonment.

The Application

4. Being aggrieved by both conviction and sentence, the Applicant filed a Petition of Appeal dated 02/03/2026 and a Chamber Summons Application of even date. The Application which is the subject



of this ruling is brought under Article 49(1)(h) of the Constitution of Kenya, Sections 123 and 357 of the Criminal Procedure Code and any other provision of law. It seeks the following orders;

- a. Spent.
 - b. That the honorable court be pleased to grant the Appellant/Applicant reasonable bail/bond pending the hearing and determination of the Appeal.
5. The Application is supported by the grounds on its face and the Applicant's Affidavit sworn on the same day. He deposed that he was convicted for contravening section 11(1) of the Sexual Offences Act in Tawa SPM SO Case No. E014 of 2024 on 24/02/2026. That, he has appealed against the whole judgment and has been advised by his advocate on record that the Appeal has overwhelming chances of success. That, he has also been advised that the Appeal will take a long period to be heard and determined hence may be rendered nugatory as he will have served a substantial part of the sentence. Copies of the judgment and Petition of Appeal are exhibited as BKM 1 & 2 respectively.
6. He further deposed that; the lower court had admitted him to bond in respect of which he attended court faithfully and has no intention of jumping bail on the terms to be set by this honorable court; he is a father of three minors and the sole breadwinner of his family and his elderly sick father; he is a teacher by profession and is at risk of being dismissed from employment if he is not admitted to bail/bond. A letter dated 24/02/2026 from the Principal of Kikima Secondary School is exhibited as BKM 4.
7. He averred that; he has a known permanent place of abode at Kikima in Mbooni within Makueni County hence not a flight risk; he has good antecedents; he is of high moral standing and has no previous criminal record. A letter from the Chief is exhibited as BKM 5. He further averred that he is ready to abide by whatever lenient terms that will be set by the court. It is his view that there are no compelling reasons not to admit him to bail.

The Response

8. The State opposed the Application via the following grounds of opposition, dated 19/03/2026;
- a. That the Applicant/Appellant is a convict who is serving sentence hence the presumption of innocence does not arise.
 - b. That the Applicant/Appellant has not demonstrated any exceptional circumstances that can warrant him being released on bond pending Appeal.
 - c. That the Applicant's Appeal does not have overwhelming chances of success.
9. The Application was canvassed through written submissions.

The Applicant's Submissions

10. The Applicant made reference to the case of Charles Owanga Aluoch -vs-DPP (2015) eKLR for the submission that; the elements to be determined in an Application for bail pending Appeal are;
- a. Whether the Appeal has chances of success.
 - b. There are exceptional or unusual circumstance to warrant the court's exercise of discretion.
 - c. There is a high probability of the sentence being served substantially before the Appeal is heard.
11. On whether the Appeal has chances of success, it was submitted that the evidence adduced by the prosecution was inconsistent and insufficient hence did not reach the threshold of proof beyond reasonable doubt. That, the trial magistrate disregarded the convincing evidence adduced by the



Applicant in his defence. That, more importantly, the Applicant was acquitted of the main charge of defilement hence the grounds of Appeal can render the sentence to be varied upon full consideration by the court.

12. As to whether there are exceptional circumstances, it was submitted that the Applicant was granted bond by the trial court and he faithfully attended without absconding. That, he is the sole breadwinner of his family and is at risk of losing his teaching job. That, he is of good moral standing and has no previous criminal record.
13. As to whether there is a high probability of the sentence being served substantially before determination of the appeal, it was submitted that the Applicant was convicted of the alternative charge and sentenced to serve 10 years imprisonment. That, the uncertainty of when the appeal will be determined makes it highly probable that the sentence will have been served substantially. Reliance was placed on the case of R -vs- Kanji (1946) 22 KLR where bail was granted because the Appeal was not likely to be heard until the appellant had served one-fourth to one-third of their sentence.
14. It was submitted that the Applicant is a law-abiding citizen and has a permanent place of abode hence not a flight risk. It was contended that the prosecution has not advanced any grounds which would entitle this court to deny him bail.
15. The State did not file submissions.
16. Having looked at the Application, Grounds of Opposition, exhibited documents and submissions, the only issue for determination is whether the Applicant should be granted bail pending appeal.

Analysis

17. The basis of bail pending Appeal is section 357 of the Criminal Procedure Code which provides that;
 - “(1) 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 order appealed against shall be suspended pending the hearing of his appeal.”
18. The case of Jiv raji Shah -vs- R (1986) KLR 605 is instructive on the principal considerations for granting bail pending appeal i.e.;
 - (1) Existence of exceptional or unusual circumstances upon which the court can fairly conclude that it is in the interest of justice to grant bail.
 - (2) If It appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of a substantial point of law to be urged and that the sentence or substantial part of it will have been served by the time the appeal is heard, then, a condition of granting bail will exist.
 - (3) Main criteria is that there is no difference between overwhelming chances of success and set of circumstances which disclose substantial merit in the appeal – being allowed, the particular circumstances and weight and relevance of the points to be argued.”



18. Similarly, in the case of Daniel Dominic Karanja v Republic [1986] KECA 37 (KLR) the court of Appeal had this to say;

“The most important issue here is if the appeal has such overwhelming chances of success that there is no justification for depriving the applicant of his liberty. The minor relevant considerations would be whether there are exceptional or unusual circumstances. The previous good character of the applicant and the hardship, if any, facing the wife and children of the applicant are not exceptional or unusual factors: see Somo v Republic [1972] E A 476. A solemn assertion by an applicant that he will not abscond if he is released is not sufficient ground, even with support of sureties, for releasing a convicted person on bail pending appeal. The applicant was certified to be fit by a doctor on September 23, 1986 and so no issue of illhealth arises. We are not to be taken to mean that ill-health per se would constitute an exceptional or unusual circumstance in every case. There exist medical facilities for prisoners in the country.

19. It is however worth noting that, unlike bail pending trial where an accused person is presumed innocent until proved guilty, the scenario is different when it comes to bail pending appeal. The insulation often enjoyed in bail pending trial is lifted hence not available in bail pending appeal.
20. Briefly, the prosecution’s case before the trial court was that; the Applicant and victim’s family were neighbors in a rental property. The victim’s mother, PW1, testified that while at home on two occasions, she noticed that the victim was missing and upon calling her name, the victim emerged from the Applicant’s house. Subsequently, the victim told PW1 that the Applicant had touched her breast and private part. The victim, PW2, testified that she went to the Applicant’s house after church whereupon the Applicant told her to sit on his laps, separated her legs and touched her vagina using his fingers. He then opened the zip and touched her breasts.
21. PW3, the landlord, testified that PW1 reported the incident to him and he held a meeting with the Applicant and PW1 whereupon the Applicant admitted that he touched the victim’s private parts and asked for forgiveness. PW3 told the Applicant to vacate the premises as he could not trust him with children any more. PW4 was the Clinical Officer who examined the victim and he testified that he did laboratory works and there was nothing significant seen on genital examination. That, the internal genitalia was reddish and inflamed but the hymen was intact. That, the inflammation meant that something had touched the genitalia with force but whatever it was did not go through the hymen. The Investigating Officer, PW5, testified that she visited the scene which was the Applicant’s rental house and that the Applicant and complainant were next door neighbors. The Applicant had vacated the premises.
22. Having looked at the Petition of Appeal, the proceedings before the trial Court and the judgment, prima facie, I am of the view that the Application does not meet the threshold for grant of bail/bond pending appeal. I am minded not to pre-empt the merits of the Appeal hence will not belabor the point at this juncture.
23. Secondly, the Applicant was sentenced in March this year hence my view that he will not have served a substantial part of the sentence by the time the Appeal is determined.

Conclusion

24. In my view, the Application has no merit hence dismissed. Appeal be set down for hearing and the same be expedited.



DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22ND DAY OF APRIL 2026.

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J.N.ONYIEGO

JUDGE

