



**Njoroge v Republic (Criminal Case E003 of 2026)  
[2026] KEHC 6353 (KLR) (5 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6353 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CRIMINAL CASE E003 OF 2026  
DKN MAGARE, J  
MAY 5, 2026**

**BETWEEN**

**ELIKANA MACHARIA NJOROGE ..... APPELLANT**

**AND**

**THE REPUBLIC ..... RESPONDENT**

**RULING**

1. The application dated 16.07.2025 seeks for bond pending appeal. The main reason is that he is likely to be rendered nugatory, if he is not released. However, the state opposed that the motivation to escape was high given the high number of years (40 years). It was noted that the state has already signalled the intention to request for enhancement of sentence. The Appellant was charged with defilement contrary to Section 8(1) & (2) of the *Sexual Offences Act* No. 3 of 2006.
2. Further, the state noted that the sentence is likely to be enhanced in view of the Supreme Court decision in the case of Republic V Mwangi, Initiative for Strategic Litigation & 3 others (Amicus Curae) Petition E018 of 2023 [2024] KESC 34 KLR.
3. What then falls for determination is whether the Appellant has not criterion for release on bond pending appeal. The bond and bail policing guidelines provide for bond pending appeal as follows:  
With respect to bail pending appeal, the burden of proof is on the convicted person to demonstrate that there is an “overwhelming probability” that his or her appeal will succeed
4. However, there are conditions attached. The overriding objection is that there is an overwhelming probability that the appeal will succeed. This was not shown to be the case. Here was nothing placed me before me to show the overwhelming possibility of success. See Charles Karuga Wahome V Republic [2006] eKLR; James Nyamosi V Republic [2009] eKLR, Edward Aliau Kivuyo V Republic [2007] eKLR; Imran Mallu V Republic [2006] eKLR and Henry Mbengo Rioba V Republic [2004] eKLR.



5. It is not enough that the Appeal may succeed but that the chances are so high that a reasonable court will weigh against not releasing on bond pending appeal. This is because the presumption of innocence is already lost.
6. The second aspect is that the Appellant was charged with defiling a minor, where he is in a position of loco parentis. It will not be proper to have him back to the community when the veil of guilt is hanging on him as Domacles sword. It is also not clear that a retrial will not be ordered. There was paucity of material placed before court to show that a retrial is unlikely to be ordered. further the chances of the appeal succeeding have not been shown to be overwhelming. a casual perusal of the proceedings militates against granting bond pending appeal at this point.
7. Regarding the fear of being terminated, the court is aware that the conviction is not a pre-requisite for terminating an employee. the conviction or otherwise does not change the decision the employer is likely to make. this is because termination is for gross misconduct is on a civil case and does not depend on the guilt of an accused person.
8. Indeed, even an acquittal does not save the appellant from dismissal. I have perused the Judgment of the court, and the application. I am convinced that the appellant will have to take a shot at the appeal itself being heard.
9. The application dated 16/7/2025 lacks merit and is accordingly dismissed. The matter shall be mentioned for directions on 4/3/2026. The record be supplied. Meanwhile, the appellant to remain in lawful custody.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 5<sup>TH</sup> DAY OF MAY, 2026.**

Ruling delivered in open Court.

**KIZITO MAGARE**

**JUDGE**

In the Presence of: -

Mr. King'ori for the Appellant

Ms. Kaniu for the State

Court Assistant - Michael

**M.D. KIZITO, J**

