



REPUBLIC OF KENYA



KENYA LAW
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**Idd v Republic (Criminal Appeal (Application) E006 of 2024)
[2025] KECA 285 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KECA 285 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CRIMINAL APPEAL (APPLICATION) E006 OF 2024
AK MURGOR, KI LAIBUTA & GWN MACHARIA, JJA
FEBRUARY 21, 2025**

BETWEEN

RASHID IDD APPLICANT

AND

REPUBLIC RESPONDENT

*(An application for bail pending hearing and determination of
Appeal against the Judgment of the High Court at Mombasa)*

RULING

1. The applicant, Rashid Idd, brought his Notice of Motion dated 19th June 2024 under Rule 5(2) (a) of the Court of Appeal Rules, 2010 seeking, inter alia, that this Court be pleased to admit the applicant to bail pending the hearing and final determination of his appeal before this Court.
2. The applicant's motion is brought on the grounds that; the appeal raises both substantial and triable points of law with a high probability of success, particularly with respect to whether the circumstantial and medical evidence adduced at the trial sufficiently proved the offence; and further that, this Court has the discretion to grant bail since the sentence of life imprisonment was substituted with a sentence of 25 years imprisonment by the High Court. It was also contended that the applicant's right to liberty was at stake and that the applicant was willing to honour the terms imposed by this Court in the event bail is granted.
3. The application is supported by the affidavit of Iddi Rashid Mwanguru, the father of the applicant in which he reiterated the grounds on the face of the application and further deposed that he is ready to provide security; that the applicant has been in prison since 23rd January 2021 after he was found guilty by the trial Magistrate and sentenced to life imprisonment; and that, therefore, it is only fair and just that he be granted bail.



4. The applicant filed written submissions, and when the motion came up for hearing on a virtual platform, learned counsel Mr. Lusanza holding brief for Mr. Kasenga for the applicant submitted that the applicant's appeal has an overwhelming possibility of success since the conviction for the offence of defilement was substantially based on uncorroborated circumstantial and inconclusive forensic evidence; that further, the doctor's evidence clearly stated that the complainant had engaged in sexual relations with unknown persons, and that therefore, there was evidence of previous penetration.
5. Counsel further submitted that the first appellate court was in error in law in failing to critically analyze the evidence adduced before the trial Magistrate, and had this been done, the Judge would no doubt have found that the circumstantial evidence adduced was not sufficient to sustain a conviction.
6. It was further submitted that there were exceptional circumstances that demanded that bail be granted, including the possibility of a substantial delay in the hearing of the appeal in view of the upcoming August and December 2024 vacations, and the numerous appeals still pending hearing before this Court. We were urged to admit the applicant to bail/bond on such terms as are just.
7. On behalf of the respondent, learned prosecution counsel Ms. Nyawinda filed grounds of opposition and opposed the application. Submitting orally, counsel stated that no exceptional circumstances have been set out to warrant the granting of bail. It was contended that the applicant being a convicted person was a flight risk, and was therefore liable to jump bail. It was further argued that the appeal did not have any chances of success, since the offence of defilement was proved to the required standard. Counsel also went on to assert that this Court is currently disposing of pending criminal appeals timeously and expeditiously, and that, therefore there was no likelihood of delay in hearing and determining the applicant's appeal.
8. The principles to be considered for granting of bail pending appeal by this Court were outlined in the case of *Jivraji Shah vs Republic* [1966] KLR 605, as follows:
 - “(1) The principle 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 facie 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.”
9. Applying the above principles to the circumstances of this case, we begin by observing that the Judgments of the two courts below were not annexed to the motion. As such, we were not in a position to ascertain the chances of success of the grounds of appeal raised in the draft memorandum of appeal, and therefore for the purposes of this application, this criteria was not satisfied.
10. Upon further interrogation of the motion, we are unable to find any exceptional or unusual circumstances that would warrant the grant of bail pending appeal. In particular, we do not agree with the applicant's assertions that by the time the appeal is heard and determined, he may have completed serving the sentence imposed or a substantial portion of it. We say so because, as rightly observed by learned counsel for the respondent, this Court is steadily and consistently hearing and determining



pending criminal appeals, and there is every likelihood that the applicant's appeal will be disposed of well before serving the sentence imposed or a substantial part thereof.

11. For the above reasons, we decline to grant the orders for bail sought. The applicant's motion dated June 19, 2024 is lacking in merit and is therefore dismissed.

It is so ordered.

DATED AND DELIVERED AT MOMBASA THIS 21ST DAY OF FEBRUARY 2025.

A. K. MURGOR

.....

JUDGE OF APPEAL

DR. K. I. LAIBUTA CArb, FCIArb.

.....

JUDGE OF APPEAL

G. W. NGENYE-MACHARIA

.....

JUDGE OF APPEAL

I certify that this is the true copy of the original

Signed

DEPUTY REGISTRAR

