



**Wamalabe alias Guka v Republic (Criminal Application
E006 of 2024) [2025] KECA 986 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KECA 986 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E006 OF 2024
HA OMONDI, LK KIMARU & AO MUCHELULE, JJA
MAY 30, 2025**

BETWEEN

JOHN WAMALABE ALIAS GUKA APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for bond pending appeal against the judgment of the High Court
(R.E. Ougo, J.) at Bungoma dated 2nd November 2023 in HCCRA No. E034 of 2023)*

RULING

1. Bail pending the hearing and determination of an appeal can only be granted if there are exceptional or unusual circumstances, one of which is the likelihood of the appeal succeeding (see *Ademba v Republic* [1983] eKLR).
2. The applicant, John Wamalabe alias Guka, is 84 years old. In Sirisia Criminal Case No. 027 of 2020, he was convicted of defilement under section 8(1) and 8(3) of the *Sexual Offences Act*, No. 3 of 2006 and sentenced to serve 20 years in jail. On appeal to the High Court at Bungoma, the conviction was confirmed but the sentence was reduced to 10 years. He was still aggrieved and appealed to this Court.
3. While the appeal is pending, he has, through the notice of motion dated 29th October 2024, asked to be released on bail pending appeal. His grounds are that he has chronic peptic ulcers, hypertension and is asthmatic; that given his age, his health continues to deteriorate; that he is of good conduct and the sole breadwinner of his family. Arguments for his release were made by learned counsel Mr. Sichangi.
4. Learned counsel for the State, Ms. Mwaniki, submitted that the applicant had not demonstrated that there were any exceptional circumstances that would call for his release on bond; that the application was an afterthought, having been filed one year after the decision of the High Court; and that the application should be dismissed as the applicant had served a substantial part of his sentence.



- 5. The Court was informed that the applicant was related to the complainant whom he had defiled.
- 6. The applicant is of advanced age and may be sick, but these facts must have been known to the trial court and the first appellate court. We do not think they present any exceptional or unusual case to enable the exercise of this Court’s discretion in favour of the applicant. We have looked at the grounds in the memorandum of appeal. Without any further elaboration, the grounds alone do not show that the appeal has overwhelming chances of success.
- 7. It has to be noted that, once a person has been convicted and sentenced, there is a presumption that he has been properly convicted and sentenced, and, therefore, unlike when he is awaiting trial, he is not entitled to bail.
- 8. We decline the invitation to release the applicant on bail, but direct that, given his age, the appeal be prioritised.

DATED AND DELIVERED AT KISUMU THIS 30TH DAY OF MAY, 2025.

H.A. OMONDI.

JUDGE OF APPEAL

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L. KIMARU

JUDGE OF APPEAL

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A.O. MUCHELULE

JUDGE OF APPEAL

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I certify that this is a true copy of the original

DEPUTY REGISTRAR

