



**Owiti alias Daddy Job v Republic (Criminal Appeal E046 of 2024)
[2025] KEHC 733 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 733 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL APPEAL E046 OF 2024
RE ABURILI, J
JANUARY 30, 2025**

BETWEEN

JOAB OGADA OWITI ALIAS DADDY JOB APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Application before this Court for determination is a Notice of Motion dated 24th June 2024. It seeks the following orders:
 - a. That this Application be certified as urgent and be heard ex-parte in the first instance service thereof being dispensed with.
 - b. The applicant be admitted to bail pending the hearing and determination an appeal lodged against the judgement delivered by the Honourable Principal Magistrate at Maseno J. Kimetto in Maseno S.O. Case No. 23 of 2020
 - c. That costs of this application be in the cause.
2. The Application is premised on the grounds set out on the face of the application and is supported by the Affidavit sworn by Joab Ogada Owiti, the applicant/appellant herein.
3. The Applicant's case is that he was charged before Maseno Principal Magistrate's Court vide MPMC Sexual Offence Case No. 23 of 2020 with the offence of defilement Contrary to Section 8 (1) (3) of the [Sexual Offences Act](#). That after a full trial, he was found guilty, convicted and sentenced to serve twenty (20) years imprisonment. That being aggrieved by the conviction and sentence of the trial court, he has preferred an appeal to this Court.
4. The Applicant further avers that this Appeal has high chances of success as evidenced by the filed Petition of Appeal dated 21st June 2024.



5. The Applicant avers that the medical records and reports provided were marred with inconsistencies and generally that the evidence presented before the trial court was not sufficient to sustain a conviction.
6. The Applicant also states that being a fresh graduate, he has secured an internship opportunity with a financial institution and there is a likelihood of his career stalling in the event his appeal eventually succeeds while he continues to be in jail.
7. The Applicant also states that he undertakes not to abscond from jurisdiction of the court if he is released on bail.
8. Both parties made oral submissions on this matter. I will summarize each of the parties' submissions as hereunder.
9. For the Applicant who acts pro se, it was submitted that the Applicant wants to save his job hence the current application. It was further submitted that the Applicant is ready to offer the security that shall satisfy the court, that the appeal has high chances of success as there are inconsistencies in the medical reports.
10. For the Respondent, Ms. Mogoa, Counsel for the State submitted opposing the application. It was submitted that there are no exceptional and unusual circumstances to warrant grant of bail.
11. Ms. Mogoa submitted that the applicant was working on a contract and missing out on a job is not an exceptional circumstance and that even though he was out on bond during the trial, he is now a convict. It was further submitted that the Applicant had not demonstrated that he deserves to be released on bond pending appeal.

Analysis and Determination

12. Bond or bail pending Appeal is provided for under Section 357 of the *Criminal Procedure Code* (CPC). It provides;

“ 357. Admission to bail or suspension of sentence pending appeal

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 or order appealed against shall be suspended pending the hearing of his appeal: Provided that, where an application for bail is made to the subordinate court and is refused by that court, no further application for bail shall lie to the High Court, but a person so refused bail by a subordinate court may appeal against refusal to the High Court and, notwithstanding anything to the contrary in sections 352 and 359, the appeal shall not be summarily rejected and shall be heard, in accordance with such procedure as may be prescribed, before one judge of the High Court sitting in chambers.
2. If the appeal is ultimately dismissed and the original sentence confirmed, or some other sentence of imprisonment substituted therefor, the time during which the appellant has been released on bail or during which the sentence has been suspended shall be excluded in computing the term of imprisonment to which he is finally sentenced.



3. The Chief Justice may make rules of court to regulate the procedure in cases under this section.”
13. It is clear that this court has powers to grant bond/bail pending Appeal.
14. The principles for the grant or denial of bond/bail pending Appeal were set out in *Jivraj Shah v Republic* (1986) eKLR, *Ademba v Republic* (1983) eKLR and *Dominic Karanja v Republic* (1986) eKLR.
15. Thus, the considerations for the court to grant or deny bond pending appeal are;
- a. That the Appeal has overwhelming chances of success.
 - b. The previous good character of the Applicant.
 - c. The existence of exceptional or unusual circumstances.
 - d. The sentence or substantial part of it will have been served by the time the Appeal is heard.
16. I have considered the Appeal filed. Evidently, it does not raise any substantial or weighty point of law. It is essentially founded on facts and the findings of the trial court. At this stage, however, this Court is cautious not to try and determine the Appeal. This should await the appropriate time.
17. The grounds adduced by the Applicant call for the court to re-evaluate the evidence as it is obliged to (see *Okeno v Republic*).
18. In my opinion, there are no exceptional or unusual circumstances that would necessitate the grant of the orders sought.
19. Whereas the previous good record of the Applicant is a ground for consideration, that alone is not sufficient to warrant the grant the orders sought.
20. It must be remembered that during the trial, the Applicant was presumed to be innocent. Right now, he has been convicted by the Court of competent jurisdiction. Thus, the Application of Article 49 (1) (h) of the *Constitution* do not apply to the Applicant in this instance.
21. At present, this court is handling Appeals at a very exceptionally high rate. There are really no unreasonable delays in determining the same. The Applicant was only convicted on 30th May 2024, to serve a sentence of 20 years, which is not a short sentence, by any means. It can therefore not be said that he would have spent a considerable period of time in prison awaiting the hearing and determination of his appeal. I am of the opinion that this is an Appeal that can be heard and determined in the shortest time possible.
22. Consequently, I disallow the application for bail pending appeal dated 24th June, 2024. It is hereby dismissed. The file to be placed before the Presiding Judge for admission of the appeal and directions on appeal on 26th February, 2025.
23. The Ruling to be uploaded and published in the portal and a signal do issue to prison.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI VIA MICROSOFT TEAMS
THIS 30TH DAY OF JANUARY, 2025**

R.E. ABURILI

JUDGE

