



REPUBLIC OF KENYA



**Kioko v Republic (Criminal Appeal E030 of 2024)
[2025] KEHC 3884 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3884 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL APPEAL E030 OF 2024
EN MAINA, J
MARCH 27, 2025**

BETWEEN

NICHOLAS KIMEU KIOKO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Background

1. The Applicant herein was charged, convicted and sentenced to a term of imprisonment for 20 years for the offence of Defilement Contrary to Section 8(1)(3) of the *Sexual Offences Act*. He has appealed against the conviction and sentence and now wishes to be released on bond pending appeal.
2. The gist of the application is that the Appellant has a life-threatening illness as evidenced by the medical report from Thika Level 5 Hospital which is annexed to the application. He has also averred that, during the trial he was not represented by an advocate hence he did not receive a fair trial, that his appeal has overwhelming chances of success and that he did not abscond the trial despite being on bond.
3. He contends that his medical condition requires him to see a specialist twice a month and that the facilities that would address his condition are unavailable at the prison thus his health is likely to deteriorate if he continues to be in prison during the pendency of his appeal.
4. He stated that he has always attended court and will continue to do so should his application be allowed.

Determination/analysis

5. I have considered the application and rival submissions. I have also perused the medical report. This court has discretion to grant bail/bond pending appeal under Section 357(1) of the *Criminal Procedure Code*.



6. In considering whether or not to grant bond the court is guided by established principles albeit that each case is unique and must be decided on its own merits. The said principles were laid as follows in the case of *Jivraj Shah v Republic* [1986]KLR 605-

- “(a) The principal consideration in an application for bail pending appeal is the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it is in the interests of justice to grant bail.
- (b) 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.
- (c) 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.

.....”

7. The above principles were reiterated in the case of *Peter Hinga Ngotho v Republic* [2015] eKLR.
8. Save for annexing a medical report and asserting that he cannot get the care that he requires in prison, the Applicant has not adduced evidence to prove that fact as indeed where the prison cannot provide such care as is required by an inmate it outsources the facilities from government hospitals. His illness perse, is not therefore an exceptional circumstance.
9. Similarly, in the case of *Peter Hinga Ngotho v Republic* (*supra*) the Court of Appeal held that the fact that Appellant did not breach the bail conditions did not constitute exceptional circumstances.
10. The upshot is that the application is not allowed. However, given the circumstances the Applicant’s appeal shall be expedited.

It is so ordered.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 27TH DAY OF MARCH, 2025.

E. N. MAINA

JUDGE

In the presence of:-

Ms Kaburu for the state

Miss Adhiambo for Mr. Mbuvo for the Applicant

C/A: Wambua

