



**Njiraine v Republic (Criminal Appeal E007 of 2024)
[2024] KEHC 6288 (KLR) (29 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6288 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL APPEAL E007 OF 2024
RM MWONGO, J
MAY 29, 2024**

BETWEEN

DANIEL MURIMI NJIRAINI APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant filed this application seeking bail pending appeal. It is supported by his supporting affidavit in which he avers that he suffers medical ailments. These arise from a fracture of his tibia suffered from a traffic accident in 2021.
2. The applicant was convicted with two counts of defilement in Kerugoya CM S.O. E002 of 2023 on 25th January 2024. He was sentenced to 15 years imprisonment in each count, to run concurrently. He asserts that during trial in the lower court he was out on bond, and faithfully attended trial. He seeks a bond of Kshs.1,000,000/= with a surety of similar amount.
3. The prosecution admits the jurisdiction of this court in this matter, and states that the issue of bail pending appeal is at the discretion of the court.
4. I have considered the parties submissions, which were made orally and also in writing; I have also considered the documents and material filed in court.
5. There is no constitutional absolute right to bail for a convicted person. Section 357(i) of the *Criminal Procedure Code* provides:

“After entering of an appeal by a person entitled to an 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.”

Whether there are exceptional or unusual circumstances upon which to grant bail.

6. The applicant avers that:
 - a. He suffered a fracture to the right tibia following a traffic road accident in 2021.
 - b. That due to the injury, the applicant suffers from recurrent infection which is likely to lead to chronic osteomyelitis.
 - c. That due to the deteriorating health condition, he is apprehensive that he will not be able to access necessary medical care to manage his condition.

7. In *Ibrahim Samon Ali v Republic* [2021] eKLR, the principles taken into consideration in an application of bond/bail pending appeal are;

“The existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that indeed it is in the interest of justice to grant bail”.

The Applicant herein presents a health condition that should be interrogated by this Court, and if it deems fit that the Applicant deserves bail pending Appeal on such condition, this Court should impose upon the Applicant terms to be adhered to.

8. The Applicant availed, inter alia, a Medical Report and Discharge Summary from Kerugoya County Referral Hospital which highlight the fracture to his right tibia. The Discharge Summary shows that he was discharged on 30.9.2021, and that his return dates are in 17.10.2024, following a successful implant removal. The Medical Report dated 10.2.2024 does not seem to indicate he has any pressing medical requirement. The report states:

“Current Complaint

“He was in fair general state of health, he had a limping gait with limited flexion of the right knee movement of not more than 120. The surgical scar was also evident.”

9. This report and Discharge Summary do not present a picture of a person whose medical situation is jarring or requires urgent attention.
10. In the case of *Charles Owanga Aluoch v Director of Public Prosecutions* [2015] eKLR where it was held that:

“The right to bail is provided under Article 49(1) of the Constitution but is at the discretion of the court, and is not absolute. Bail is a constitutional right where one is awaiting trial. After conviction that right is at the court’s discretion and upon considering the circumstances of the application. The courts have over the years formulated several principles and guidelines upon which bail pending appeal is anchored. In the case of *Jiv Raji Shah vs. R* [1966] KLR 605, the principle considerations for granting bail pending appeal were stated as follows:

“(1) The principal 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 face 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.”

11. The Bail and Bond Policy Guidelines of 2015, paragraph 4.30 also provides;

“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”.

Disposition

12. I do not consider the present circumstances of the accused as exceptional or unusual circumstances. I am aware that this court will be conducting a Service Week in August 2024. The applicant should take advantage of the Service Week to file his record of appeal and submissions so that the appeal is heard and dispensed with on a fast-tracked basis.
13. Accordingly, I decline the application for bail pending appeal and dismiss the same. Let the applicant filed the record of appeal for a fast-tracked hearing.

Orders accordingly.

DELIVERED AT KERUGOYA THIS 29TH DAY OF MAY, 2024

R MWONGO

JUDGE

In the presence of:

Accused Present in Nyeri Maximum

Kiragu for Applicant

Maari for the State

Murage, Court Assistant

