

KENYA / JUDGMENT

Wandera v Republic

[2026] KEHC 13686 (KLR)

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COURT

High Court

BEFORE

SM Mohochi

CASE / FILE NUMBER

Criminal Appeal E035 of 2026

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Wandera v Republic (Criminal Appeal E035 of 2026) [2026] KEHC 13686 (KLR) (17 September 2026)
(Ruling) Neutral citation:

[2026] KEHC 13686 (KLR) Republic of Kenya In the High Court at Busia Criminal Appeal E035 of 2026 SM Mohochi, J September 17, 2026 Between Joshua Harrison Wandera Appellant and Republic Respondent

Ruling

A. Introduction and Background 1. The Applicant, Mr. Joshua Harrison Wandera, moved this Court by way of a Notice of Motion dated 22 nd July 2026, seeking admission to reasonable bail or bond terms pending the hearing and determination of his criminal appeal. Alternatively, he sought for a suspension of the execution of his custodial sentence or expedited directions for the hearing of the main appeal. 2. The Applicant was tried and convicted for the offense of defilement contrary to Section 8(1) as read with Section 8(4) of the Sexual Offences Act (No. 3 of 2006), before the Senior Principal Magistrate's Court at Busia in Busia MCSO/E041/2023 on 17 th June 2026. The trial court subsequently sentenced him to a term of fifteen (15) years' imprisonment. 3. Aggrieved by the entire decision, the Applicant lodged a Memorandum of Appeal on 24 th June 2026, raising eleven (11) distinct grounds challenging both conviction and sentence. The present application is strongly opposed by the State through Grounds of Opposition dated 28 th July 2026. B. Summary of Parties' Submissions The Applicant's Case: 4. The Applicant argues that, his appeal discloses substantial merit with a high probability of success. He contends that, the trial magistrate erred by shifting the burden of proof to him regarding an alibi defense supported by two witnesses, DW2 and DW3. He further states that, the trial court relied on uncorroborated, inconsistent testimony from the complainant, violating Section 124 of the Evidence Act . 5. Furthermore, he highlights that the medical evidence revealed an "old hymenal tear" with no signs of fresh injuries, which fails to support the prosecution's timeline. Lastly, he notes that he complied with all bond terms during the trial,

maintains a fixed abode within Busia County, and is not a flight risk. The Respondent's Case: 6. The Director of Public Prosecutions (DPP) opposes the application. The State argues that, upon conviction by a court of competent jurisdiction, the Applicant's constitutional presumption of innocence under Article 50(2)(a) was entirely extinguished. 7. The Respondent submits that, bail pending appeal is a discretionary remedy reserved purely for exceptional or unusual circumstances, which the Applicant has failed to establish. It is their contention that compliance with previous trial bond terms is an ordinary legal obligation rather than an exceptional circumstance. 8. Finally, the State argues that, a fifteen-year custodial sentence is substantial, and it remains in the public interest that the Applicant serves his sentence unless strict statutory thresholds are met. C. Issues for Determination 9. Having considered the pleadings, written submissions, and statutory legal framework, this Court identifies two (2) core issues for determination: i. Whether the Applicant's appeal discloses a prima facie case with overwhelming chances of success? ii. Whether there exist exceptional or unusual circumstances that justify releasing a convicted person on bail pending appeal? D. Legal Framework and Principles 10. Applications of this nature are principally anchored on Section 357(1) of the Criminal Procedure Code (Cap. 75). This statute grants the High Court judicial discretion to release a convicted person on bail or suspend the execution of their sentence pending appeal. 11. It is a fundamental principle of criminal jurisprudence in Kenya that the presumption of innocence lapses upon conviction. Consequently, bail pending appeal is not an automatic or constitutional right; it is a discretionary remedy exercised with extreme caution. 12. The locus classicus governing this judicial discretion includes the case of *Jivraj Shah v Republic* KLR 605 and *Daniel Dominic Karanja v Republic* KLR 612. That firmly establish the primary criterion is whether the appeal exhibits overwhelming chances of success. 13. The relief being sought is discretionary and the onus is on the Appellant to show case and specify the screaming ground that manifest overwhelming chance of success. Unfortunately, with respect all the Eleven (11) grounds are sweeping and general and to deduce success therefrom would entail the Appeal trial and review which cannot be undertaken at this interlocutory stage. 14. While individual factors like prior bond compliance, good character, or family hardships remain relevant to general risk management, they do not constitute exceptional circumstances on their own. This strict position was recently reaffirmed by the Court of Appeal in the case of *Ndakwa v Republic* (2025) KECA 723 (KLR), reaffirming that, "a general assertion of an arguable appeal is legally insufficient to bypass the post-conviction threshold". E. Analysis and Determination Evaluation of Chances of Success 15. At this interlocutory stage, this Court must meticulously avoid evaluating the full trial record or making definitive findings on credibility and guilt. The court's limited mandate is to ascertain whether the grounds raised demonstrate an obvious, self-evident error that would render the conviction completely unsafe on the face of the record. 16. The Applicant contends that, his appeal discloses overwhelming chances of success based on evidentiary contradictions, the application of Section 124 of the Evidence Act, and the rejection of his alibi defense. However, the issues raised regarding medical timelines, corroboration, and the identification of the accused are standard, triable matters for a first appellate court to re-evaluate upon full hearing. They do not reveal a total miscarriage of justice that is immediately fatal to the conviction at this preliminary phase. 17. Following a lawful conviction by a court of competent jurisdiction, the

Applicant's constitutional shield has fallen. He has failed to prove that his appeal possesses the "overwhelming" or "near-certain" prospects of success required to displace a formal judgment of the trial court. Length of Sentence and Flight Risk Factor 18. Centrally, this Court must weigh the risk of the Applicant absconding against his liberty interests. The Applicant was sentenced to a substantial custodial term of fifteen (15) years' imprisonment. Under the principles established in the case of Daniel Dominic Karanja (*supra*), the severity of the sentence is a critical parameter in judicial risk assessment. 19. It is a well-established judicial reality that facing a long-term prison sentence provides an involuntary, powerful incentive for a convicted person to take flight and evade the course of justice. While the Applicant points to his flawless history of compliance with trial bond terms, such compliance was maintained at a time when he still enjoyed the presumption of innocence and faced an uncertain, hopeful outcome. 20. Now that a definitive, heavy sentence has been imposed, the incentive to abscond has drastically escalated. Previous compliance and a fixed abode, standing alone, are ordinary legal obligations expected of every citizen and do not amount to exceptional circumstances. 21. Releasing a person convicted of a serious sexual offense under the Sexual Offences Act to a substantial fifteen-year sentence would pose an unacceptably high risk to the administration of justice. The public interest in ensuring that lawful sentences are served outweighs the Applicant's request for temporary release. F. Conclusion and Orders 22. In the final analysis, this Court finds that, the Applicant has failed to establish any exceptional or unusual circumstances to justify the court invoking its exceptional discretion of granting bail after a lawful conviction. The flight risk generated by the fifteen-year sentence is too high to be managed by ordinary bond conditions. 23. Accordingly, the Court is inclined to issue the following orders: a. The Applicant's Notice of Motion dated 22 nd July 2026 seeking admission to bail pending appeal is hereby dismissed for want of merit. b. The Applicant shall continue serving his lawful sentence of imprisonment. c. To balance the scales of justice and prevent any prejudice arising from delayed justice, the Deputy Registrar of this Court is directed to expedite the typing, certification, and transmission of the lower court record from Busia MCSO/E041/2023. d. The main appeal shall be listed for mention within the next thirty (30) days for priority hearing directions. It is so ordered. SIGNED, DELIVERED IN OPEN COURT AT BUSIA AND VIRTUALLY ON TEAMS PLATFORM ON THIS 17 TH DAY OF SEPTEMBER, 2026 HON. MOHOCHI S.M PRESIDING JUDGE

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