



REPUBLIC OF KENYA



**Nyakweba alias Odera v Republic (Criminal Appeal E080 of 2024)
[2025] KEHC 1581 (KLR) (24 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1581 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL APPEAL E080 OF 2024
TA ODERA, J
FEBRUARY 24, 2025**

BETWEEN

DANIEL MAINA NYAKWEBA ALIAS ODERO APPELLANT

AND

REPUBLIC RESPONDENT

*(From original conviction and sentence in Criminal
Case No.2158 of the Chief Magistrate's at Kisii)*

RULING

1. The applicant filed the application dated 4.10.24 seeking:
 - a. Bond pending appeal
 - b. Spent.
 - c. In the alternative suspension of sentence in Kisii Criminal case no. 2158 of 2018
 - d. That applicant be admitted to similar bond terms as in lower court.
The same is based on his own affidavit and on the grounds that;
 - i. He was convicted of attempted murder and sentenced to 15 years imprisonment,
 - ii. He has since filed the appeal herein which has high chances of success.
 - iii. He is ready and willing to abide by such terms as the court will deem fit.
 - iv. The applicant was on bond of Kshs 250,000/= in the lower court and he complied with the bond terms.



2. The applicant deponed that in his memorandum of appeal he raised the issue of identification, defect in the charge sheet and incredibility of PW3 and PW2.
3. Prosecution opposed the application by filing grounds of opposition dated 7.11.24 where they listed the following grounds; -
 - i. That the application does not meet the threshold for bond pending appeal.
 - ii. That no exceptional /unusual circumstances have been shown.
 - iii. That the appeal has no chances of success as they proved their case beyond any reasonable doubt.
 - iv. That the fact that the applicant was on bond in the lower court is not exceptional circumstance.
 - v. That the application is brought in bad faith and it is not in the interest of justice.
4. I have considered the application the response and the submissions filed herein.
5. The principles for granting bond pending appeal were laid down in the case of *Jivraj Shah v Republic* [1986] KLR 605 where it was held; -
 - a) 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.
 - 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.

Also, In the case of *Dominic Karanja v Republic* [1986] KLR 612 the Court of Appeal held that: -

 - (a) The most important issue was that if the appeal had such overwhelming chances of success, there is no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or
 - v. unusual circumstances;
 - (b) The previous good character of the applicant and the hardships if any facing his family were not exceptional or unusual
 - vi. factors. Ill health per se would also not constitute exceptional circumstances where there existed medical facilities for
 - vii. prisoners;
 - viii. (c)A solemn assertion by an applicant that he will not abscond if released, even if it is supported by sureties, is not sufficient
 - ix. ground for releasing a convicted person on bail pending appeal;



- x. Similarly in *Peter Hinga Ngotho v Republic* [2015] eKLR it was held that the fact that the applicant did not breach the bail conditions.
6. I have perused the application, The *Jivraj* and the *Karanja* cases (*Supra*) underscored that unusual or exceptional circumstances is the main ground for granting bond pending appeal and I see on unusual circumstances demonstrated herein to warrant granting of bond pending appeal.
7. The application is devoid of merit and I proceed to dismiss it.
8. The record of appeal be filed and served within 45 days from today to expedite the matter.
9. Mention on 14.4.25 before the Deputy Registrar for compliance.

T. A ODERA

JUDGE

24.2.25

Delivered virtually via Teams Platform in the Presence of:

Mr. Koima for the State

Court Assistant - Oigo

