



**Njoroge v Republic (Criminal Appeal E035 of 2024)  
[2025] KEHC 1859 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1859 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CRIMINAL APPEAL E035 OF 2024  
LN MUTENDE, J  
FEBRUARY 20, 2025**

**BETWEEN**

**ISAAC RODGER NJOROGE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Isaac Rodger Njoroge, the Appellant/Applicant, through a Notice of Motion dated 22/10/2024, seeks bail pending hearing and determination of appeal; and in the alternative, that execution of sentence in Nyahururu Magistrate's Criminal Case Number E1034 of 2023 be stayed pending hearing and determination of appeal. Further, that the applicant be released on bond terms similar to terms ordered by the trial court.
2. The application is premised on the grounds that the applicant who was out on bail during trial was on 24/9/2024 convicted and sentenced to 7 years in jail for the offences of dealing in and being in possession of wildlife trophy but has since filed an appeal against both conviction and sentence.
3. That the applicant is elderly (aged 78 years) and also sickly and it is only fair that he be admitted to bail pending appeal so that he can manage his medical conditions while out of prison.
4. That the applicant's appeal has a high chance of success as can be discerned from the petition of appeal; the applicant attended court during trial and at no time did he breach bail terms and is willing to observe any condition that may be imposed by the court.
5. That there are young children from the applicant's second marriage that solely depend on him as a bread winner. And, the applicant is likely to serve a substantial part of sentence by the time the appeal is determined.



6. The application is supported by an affidavit deposed by the applicant who reiterates what is captured on the grounds of the application. In a supplementary affidavit the appellant states that his medical condition presents special circumstances since his condition has really deteriorated, a condition that has been worsened by the prison environment.
7. The Respondent/State through learned prosecution counsel, Ms. Gladys Karuiki, filed a replying affidavit to the application where she deposed that principles for the grant or denial of bond pending appeal were set out in *Jivraj Shah v Republic* [1986] eklr. That amongst the principles set out is proof of exceptional circumstances. That the averment of the applicant that he is going through medical challenges is supported by a medical report dated 26/11/2024 from Nyahururu Referral Hospital which is exceptional circumstances.
8. I have considered averments by the applicant and respondent, and I am guided by the holding in *Odhiambo v Republic* [2008] KLR, where the Court was of a considered view that the court is not obligated to grant an order in favour of the applicant just because the State did not oppose the order being sought.
9. Section 357 of the *Criminal Procedure Code* enacts that:

“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.”
10. That provision of law gives the court power to admit the applicant on bail pending appeal, power that must be exercised judiciously in accordance with laid down principles. I must point out that at an appellate stage the court deals with an offender who has been convicted where different principles apply as the person is already a felon; and, in the instant case sentence is being served. (See *Masrani vs. R.* [1960] EA 321).
11. In *Francis Murathe v Republic* [2013] eklr, where the High Court held that:

“The eligibility to be admitted to bail pending the hearing of an appeal must be distinguished from the right to bail pending trial. The right to bail at the trial phase is guaranteed unless the prosecution demonstrates that there are compelling reasons for not granting bail. While the burden is on the prosecution to persuade the court that an accused person should not be admitted to bail pending trial the situation is different once an accused has been convicted and attained, as in the present application, the status of an appellant. As an appellant the burden is upon him to persuade the court that considering the probability of success of his appeal, he should be admitted to bail pending appeal”
12. Although an appellate court has discretionary power to grant bail pending appeal, the applicant must demonstrate that his appeal has high chances of success; and, where necessary, his case is exceptional and he is likely to serve the sentence during pendency of the appeal.
13. In the *Jivraj Shah*(supra) the Court of Appeal laid down the principles 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.”
14. In the instant application the argument is that the appeal has high chances of succeeding. The Bail and Bond policy guidelines provide that:

“the burden is on the convicted person to demonstrate that there is an overwhelming chance of success.” (See page 27 paragraph 4.30)
15. In *Dominic Karanja (supra) Nyarangi, Platt & Gachuhi JJA* held:

“1. The most important issue was that if the appeal had such overwhelming chances of success, there was no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.”
16. Where there is a likelihood of an appeal succeeding, there would be no reason to deny the applicant bail pending appeal. However, this principle was not bolstered.
17. In conceding the application the respondent is of the view that medical issues amount to exceptional circumstances. In *Dominic Karanja case (Supra)* the Court of Appeal also held that:

“...The previous good character of the applicant and the hardships, if any, facing his family were not exceptional or unusual factors. ill health per se would also not constitute an exceptional circumstance where there existed medical facilities for prisoners.”
18. To accentuate the question of the applicant’s medical condition, Ernest Mureithi, clinical officer, Nyahururu County Referral Hospital authored a letter indicating that the applicant suffers from bronchitis and arthritis. It is also indicated that he is 78 years old. What was however missing was a patient’s number to authenticate the fact of the patient having been seen in hospital. Notably, throughout trial, even at the point of mitigation, there was no mention of the age of the applicant.
19. On the issue of the sentence being served before the appeal is determined, notably, the original record of the lower court has already been availed. What remains is for the applicant to file a record of appeal and directions are given. This is a case that should be heard and determined as soon as is practicable.
20. The upshot of the above is that the applicant has not demonstrated grounds for granting bail pending appeal. The application fails and is accordingly dismissed.
21. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NYAHURURU, THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**L. N. MUTENDE**



**JUDGE**

