



**Odera v Republic (Miscellaneous Criminal Application E210 of 2024)
[2025] KEHC 2166 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2166 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION E210 OF 2024**

DR KAVEDZA, J

FEBRUARY 13, 2025

BETWEEN

SAMUEL ODERA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of facilitating exit out of the country contrary to section 7 of the Counter Trafficking in Persons Act,2010 and conspiracy to commit a felony contrary to section 303 of the *Penal Code*. He was sentenced on 17th December 2024 to serve 30 and 2 years imprisonment respectively to run concurrently.
2. He has now approached this court seeking to be released on reasonable bond/bail terms pending appeal.

Applicant’s written submissions.

3. It was submitted for the applicant that the learned magistrate erred in law and fact in convicting the applicant whereas there was no sufficient evidence to prove the charges. Further, that the applicant was not part or present when the acts of the offense were committed. Finally, that the evidence on record does not support the conviction since the applicant was off duty on the material day.
4. Additionally, the applicant produced evidence to demonstrate that he is diabetic and suffers from kidney complications that require consistent medical check-up, and that if he is not bailed out of prison, he stands to suffer irreparable damage to his health.



Respondent's written submissions

5. The state counsel in response submitted that the applicant has demonstrated exceptional circumstances to warrant grant of bail in form of a medical report indicating that he is suffering from kidney ailment and has been referred to Kenyatta National Hospital for specialized treatment. Moreover, that having gone through the record of appeal, he was satisfied that the appeal has a likelihood of success, and therefore, he was not opposed to the applicant's release on bail pending appeal.

Analysis and determination.

6. I have considered the pleadings and submissions by the appellant and the respondent. The provision of law that applies to bond/bail pending appeal is section 357 of the [Criminal Procedure Code](#) (Cap 75) Laws of Kenya which provides as follows:
 - (1) 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.
7. The principles for granting bond pending an appeal were reiterated in the case of [Jivraj Shah v Republic](#) [1986] [KLR](#) 605 which 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 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.
 - (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.”
8. In the case of [Chimambhai vs Republic](#) 1971 [EA](#) 343 J. Harris made another observation in such an application when he said;
 - “The case of an appellant under sentence of imprisonment seeking bond lacks one of the strongest elements normally available to an accused person seeking bail before trial, namely, the presumption of innocence, but nevertheless the law of today frankly recognizes, to an extent at one time unknown, the possibility of the conviction being erroneous or the punishment excessive, a recognition which is implicit in the legislation creating the right of appeal in criminal cases.....”
9. Under Article 49 of the [Constitution](#) of Kenya, 2010 an accused person who is facing a criminal charge has a right to bond because he is presumed to be innocent till proven guilty, unlike a case where one is



already convicted. In the above cases, the courts also held that anticipated delay in the hearing of the appeal, together with other factors may be grounds for grant of bail pending appeal.

10. I have carefully examined the grounds of appeal raised by the applicant. Both the applicant's and respondent's counsel are in agreement that the appeal herein has a high chance of success.
11. The rationale for considering the chances of success of the appeal was given in *Somo vs Republic* [1972] EA 472 at page 480 as follows:

“There is little if any point in granting the application if the appeal is not thought to have an overwhelming chance of being successful, at least to the extent that the sentence will be interfered with so that the applicant will be granted his liberty by the appeal court. I have used the word “overwhelming” deliberately for what I believe to be good reason. It seems to me that when these applications are considered it must never be forgotten that the presumption is that when the applicant was convicted, he was properly convicted. That is why, where he is undergoing a custodial sentence, he must demonstrate, if he wishes to anticipate the result of his appeal and secure his liberty forthwith, that there are exceptional or unusual circumstances in the case. That is why, when he relies on the ground that his appeal will prove successful, he must show that there is overwhelming probability that it will succeed.”

12. In this case, I have considered the five grounds of appeal raised in the petition of appeal. However, I am satisfied that the said grounds disclose the existence of an appeal with overwhelming chances of success.
13. On the issue of the appellant's health, the alleged ill-health of the appellant is indeed an exceptional matter, as the Prison facility may not be equipped to deal with the nature of treatment as the applicant may need to be seen by a nephrologist.
14. The upshot of the above analysis is that the applicant has demonstrated the existence of exceptional or unusual circumstances to warrant the grant of bail pending appeal. The application for bail pending appeal is thus allowed.

It is so ordered.

RULING DATED AND DELIVERED VIRTUALLY THIS 13TH DAY OF FEBRUARY 2025

D. KAVEDZA

JUDGE

In the presence of:

