



**Peter v Republic (Criminal Case E066 of 2024)  
[2025] KEHC 3345 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3345 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE E066 OF 2024**

**A MSHILA, J  
MARCH 7, 2025**

**BETWEEN**

**ALBANUS KIOKO PETER ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with the offence of dealing in Wildlife Trophies contrary Section 92(2) of the *Wildlife Conservation and Management Act* 2013; on the 29/10/2024 he was convicted and sentenced to seven (7) years imprisonment; being aggrieved by the judgment he filed the instant appeal against the conviction and sentence.
2. The application before this Court made that the provisions of Section 123(3), 126 and 357 of the *Criminal Procedure Code* and Article 51 of *the Constitution* 2010 and all other enabling provisions of the law; the Applicant seeks to be admitted to bail pending a hearing of his appeal; the application is supported by an affidavit made by the Applicant Albanus Kioko Peter; hereunder and the submissions made by counsel for the Applicant.

**Applicants Submissions.**

3. Counsel submitted that the Applicant has filed an appeal against conviction and sentence in Kahawa E029 of 2021 for the offence of dealing in Wildlife Trophies c/s 92(2) of the Wildlife Act 2013 and now seeks bail pending appeal; In the lower court the Applicant was granted cash bail of Kshs.200,000/- and secured a bond of Kshs.500,000/- and faithfully attended all proceedings until his conviction and that he had a fixed abode and was not a flight risk and prayed to prosecute the appeal when he was outside;
4. Counsel submitted that the appeal was not frivolous and urged the court to allow the application and admit the Applicant to bail pending his appeal on similar bail terms issued by the trial court.



### **Respondents Submissions.**

5. Prosecuting Counsel for the State Mr. Magero opposed the application and stated the sentence was passed by a competent jurisdiction; that bail is a constitutional right at trial and on appeal it is for the court to use its discretion; the reasons given were frivolous and vexatious and the issue of the Applicant being a flight risk is not considerable at this stage; Case law relied on Charles Omwanga Alouch v ODPP 2016 eKLR;
6. Counsel urged the court to dismiss the application.

### **Analysis.**

7. The facts of the case are that the applicant was tried and convicted in Kahawa E029 of 2021 for the offence of dealing with wildlife trophies; he was convicted and given seven (7) years imprisonment and being dissatisfied with this decision, he filed the instant application for bail pending appeal;
8. Section 357 of the *Criminal Procedure Code* provides that the subordinate court which convicted the Applicant may if it sees fit admit the Applicant to bail pending the determination of his appeal; this means that the order sought is discretionary; therefore, it is for this court to determine whether the application before it is a suitable case for it to exercise its discretion in favour of the Applicant;
9. Upon perusal of the court record the only issue raised by the Applicant is that the trial court failed to appreciate that the essential ingredients /elements of the offence as charged were not proved by the prosecution; and submitted that the appeal had a high probability of success.
10. The other ground raised is that the Applicant would have served a substantial part of his sentence by the time his appeal is heard and determined.
11. The principles upon which a court may grant applicant bail pending appeal is cited in the case of Jivraj Shah v Republic [1986] KLR 605 where it was held as follows;

“if it appears prima facie from the totality the circumstances that the appeal is likely to be successful on account of some substantial point of law to be urged or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail will exist”
12. The only issue raised by Counsel for the Applicant is that the Applicant is not a flight risk; but being a flight risk is not a determining or relevant factor for consideration for admission to bail pending appeal;
13. From the totality of the submissions made by Counsel for the Applicant this Court finds that there is no apparent prima facie case made out to demonstrate that the appeal has overwhelming chances of success;
14. The Applicant was convicted on 29<sup>th</sup> October, 2024 and has only served four (4) months in prison and this Court will ensure he will not have served a substantial part of his term before the appeal is heard and determined; this Court will hereby accord him an early hearing date for the Appeal;

### **Findings And Determination.**

15. For the forgoing reasons this Courts find that this is not a suitable case for the exercise of its discretion in favour of the Applicant.
16. The application is found lacking in merit and it is hereby disallowed;
17. Mention on March 20, 2025 for compliance.



Orders Accordingly.

**DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 7TH DAY OF MARCH, 2025.**

**A. MSHILA**

**JUDGE**

**In the presence of;**

Sanja – Court Assistant

Magero for the State

Mulupi For the Applicant/Appellant

Applicant - present

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