



**Olunya v Republic (Criminal Appeal E054 of 2024)  
[2025] KEHC 4897 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4897 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL APPEAL E054 OF 2024**

**DK KEMEL, J  
APRIL 25, 2025**

**BETWEEN**

**JACKTONE OMONDI OLUNYA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Appellant/Applicant has filed an application dated 26/11/2024 seeking principally two prayers namely; that the Appellant be admitted to reasonable bail/bond terms pending the hearing and determination of the appeal herein; that the bond terms be similar to those granted by the trial court.
2. The application is supported by the grounds set out on the face thereof and by the supporting affidavit sworn by the Appellant’s learned counsel sworn on even date. The Appellant’s gravamen is inter alia; that the Appellant has already lodged an appeal against the conviction and sentence; that the Appellant is of frail health whose well-being is at risk; that the Appellant is not a flight risk; that the Appellant is the sole bread winner for his family; that the appeal has high chances of success; that the Appellant is a person of good character and that he will adhere to the conditions to be composed; that the application should be granted in the interest of justice.
3. The application was canvassed by way of written submissions. Both parties duly complied.
4. I have given due consideration to the Appellant’s application and the submissions filed by the learned counsels. It is not in dispute that the Appellant has since been convicted and therefore does not enjoy the presumption of innocence. The issue for determination is whether the Appellant’s application meets the threshold for the grand of bail pending appeal.



5. As noted in the preceding paragraph that the Appellant has already been convicted, he now does not enjoy the presumption of innocence available to the persons awaiting trial. In the case of *Mutua Vs. R* [1988] KLR 497 the court held as follows;

“The right to bail pending trial does not automatically extend to bail pending appeal. A person who has been convicted and sentenced loses the presumption of innocence and the burden lies upon him to demonstrate exceptional circumstances warranting release on bail.”

The legal principles governing the grant of bail pending appeal were established in the case of *Jivraj Shah Vs. Republic* [1986] KLR 605 where the Court of Appeal held as follows:

“There is not a great deal of local authority on this matter and for our part such as we have seen and heard tends to support the view that the principal consideration is if there exists exceptional or circumstances upon which this court can fairly conclude that it is the interest of justice to grant bail. 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 urged, and that the sentence or a substantial part of it, will have been served by the time the appeal is heard conditions for granting bail will exist.”

Again, in *Dominic Karanja Vs. R* [1986] KLR 612 the Court of Appeal held as follows:

“The most important ground is that if the appeal has 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 are exceptional or unusual circumstances.”

Further, in the foregoing authority, the court went on to add that the previous good character of the Applicant and the hardship facing his family and his ill health where there existed prison medical facilities for prisoners are not exceptional or unusual circumstances. A solemn assertion even if by sureties that the Applicant will not abscond if released is not sufficient ground for releasing a convicted person on bail pending appeal.

Again, in *Somo Vs. R* [1972] EA 476 the court held that bail pending appeal is granted in rare cases and exceptional cases of particularly where there is overwhelming likelihood of success on appeal.

6. After analyzing the Applicant’s circumstances and Juxtaposed with the guidelines in the foregoing authorities, I find that the correct test for bail pending appeal is the exceptional and unusual circumstances test which is more encompassing of the grounds for the grant of bail pending appeal despite the applicant now not enjoying the presumption of innocence which supports the provisions of bail pending trial under Article 49 (1) (h) of *the Constitution*. This court is now called upon to look at the exceptional circumstances including the overwhelming chances of success or the existence of a prima facie arguable point or a set of circumstances that exist which discloses substantial merit in the appeal and that the sentence or a substantial portion of the sentence before the determination of his appeal so as to justify the grant in the discretion of the court to grant a bail pending appeal in this case. The Appellant has indicated that he is unwell and in need of specialized medical treatment which is not available in prison custody. However, it is noted that the Appellant has not availed any medical documents or notes to back his claim. It was incumbent upon him to vail them so as to show that he has been undergoing treatment and further go ahead and present medical documents from the medical officer attached to prison indicating that the Appellant’s medical condition cannot be addressed while in prison. I find the Appellant has not convinced this court in that regard. Further, the Appellant’s



assertion that he is of good character and will not abscond are not sufficient to justify his release on bail pending appeal.

7. As regards the issue of delay in the determination of the appeal thereby forcing the Appellant to serve out a long period of his sentence almost to term, it is noted that the record of appeal has already been availed and hence what is remaining is for the parties to take directions over the disposal of the appeal which is usually by way of written submissions. It is therefore possible to wrap up the appeal in a short period. If those are the circumstances obtaining, then the parties should now gear their energies in the expeditious disposal of the appeal.
8. On the whole, I am not convinced that the Applicant has presented the unusual or exceptional circumstances to warrant the grant of the orders sought. Consequently, the Appellant's application dated 26/11/2024 lacks merit. The same is dismissed. Parties are hereby directed to set down the appeal on priority basis.

**DATED AND DELIVERED AT SIAYA THIS 25<sup>TH</sup> DAY OF APRIL, 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

Jacktone Omondi Olunya.....Applicant

Onyata.....for Applicant

M/s Mumu.....for Respondent

Mboya.....Court Assistant

