



**Andika v Republic (Miscellaneous Criminal Case E118 of 2024)
[2025] KEHC 6581 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6581 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CRIMINAL CASE E118 OF 2024**

**S MBUNGI, J
MAY 20, 2025**

BETWEEN

BONFACE ANDIKA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein a motion dated 05.07.2024 seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That this Honorable court be pleased to admit the appellant/applicant herein on Bond pending appeal and/or on such terms this Honorable Court deems appropriate to protect the fundamentals freedoms and liberty of the appellant/applicant.
 - d. That this Honorable court be pleased to issue such other orders it deems just and convenient to meet the ends of justice.
 - e. That the costs of this application be provided for.
2. The application for bail pending appeal was premised on the following grounds:
 - I. That the applicant risks serving the custodial sentence imposed on him before the determination of his appeal. That the time taken to prepare the typed proceedings, compile the record of appeal and have the same heard, the applicant might have fully served the sentence.
 - II. That the appellant / applicant is a first -time offender and has previously complied since he never absconded any attendance in the trial court.



- III. That the appellant / applicant is ready and willing to conform and abide by all conditions and terms that the Honorable Court will set against him.
 - IV. That the appellant / applicant will attend court as required by the law and will not abscond at any given time.
 - V. That the appellant / applicant is a well behaved person and is not in any position to interfere with the witnesses in this case.
 - VI. That the appellant / applicant is ailing and needs to get proper treatment upon being released.
 - VII. That the appellant / applicant has a right under constitution of Kenya to be released on bail or bond pending hearing and determination of the case herein.
 - VIII. That the applicant's appeal has high chances of success despite the fact that the probability must not be conclusively demonstrated since that would be tantamount to hearing the merits of the appeal.
3. The application was supported by an affidavit by the applicant who reiterated the grounds of the application.
 4. When the matter came up in court on 07.04.2025, the court directed that the applicant serves his application upon the Director of Public Prosecution to enable the respondent to put in a reply within 14 days. At the time of writing this ruling, there in no response in the court file. I have also checked the CTS, the respondent has not filed a response.

Analysis and Determination.

5. I have looked at the application by the applicant and the grounds adduced thereof.
6. Bond or bail pending Appeal is provided for under Section 357 of the [Criminal Procedure Code](#) (CPC). It provides;

“ 357. Admission to bail or suspension of sentence pending appeal

- (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: Provided that, where an application for bail is made to the subordinate court and is refused by that court, no further application for bail shall lie to the High Court, but a person so refused bail by a subordinate court may appeal against refusal to the High Court and, notwithstanding anything to the contrary in sections 352 and 359, the appeal shall not be summarily rejected and shall be heard, in accordance with such procedure as may be prescribed, before one judge of the High Court sitting in chambers.
- (2) If the appeal is ultimately dismissed and the original sentence confirmed, or some other sentence of imprisonment substituted



therefor, the time during which the appellant has been released on bail or during which the sentence has been suspended shall be excluded in computing the term of imprisonment to which he is finally sentenced.

(3) The Chief Justice may make rules of court to regulate the procedure in cases under this section.”

7. I have also seen the charge sheet, the applicant was charged with the offence of stealing a motorcycle contrary to section 278(A) of the Penal Code and sentenced to serve four(4) years imprisonment. The applicant/appellant herein is a convict serving sentence. Bail/bond pending appeal, unlike bail/bond pending trial, is not a constitutional right. However, this court has discretionary powers to grant bond/bail pending Appeal.
8. The principles for the grant or denial of bond/bail pending Appeal were set out in *Jivraj Shah v Republic (supra)*, *Ademba v Republic (supra)* and *Dominic Karanja v Republic (supra)* which outline the considerations for the court to grant or deny bond pending appeal as follows;
 - a. That the Appeal has overwhelming chances of success.
 - b. The previous good character of the Applicant
 - c. The existence of exceptional or unusual circumstances.
 - d. The sentence or substantial part of it will have been served by the time the Appeal is heard.
9. The Applicant has complied with Sec 357 (1) of the Criminal Procedure Code by filing an appeal dated 24.03.2025.
10. In the case of *Francis Kamote Mutua vs. Republic [1988] eKLR (Platt, Apaloo JJA & Masime, Ag JA)*, the court held that an appellant, seeking bail pending appeal, is a convicted person, serving sentence for his crime. It would be open to the court to grant bail/bond, subject to such terms or conditions as the court may deem reasonable.
11. On 06.02.2025 the court ordered that a pre-bail report be filed within ten days. The same was duly filed. From the record and the pre-bail report, the applicant was on bond all throughout the lower court trial, before his imprisonment. He did not abscond court. It is my view that this precedent vouches for the applicant’s good behavior.
12. The applicant has also averred that he is ailing and needs to get proper treatment. Albeit this might be an exceptional circumstance, No medical evidence has been attached to his application and thus this court cannot ascertain the legitimacy of this averment.
13. The applicant/appellant has also expressed his concern that he might serve the custodial concern imposed on him before the determination of his appeal, thus rendering the appeal nugatory. I have looked at the record, despite the appeal having been filed, neither the lower court file, nor the record of appeal have been availed. I therefore find this to be a valid concern by the applicant/appellant.
14. Moreover, no objections have been raised by the respondent, for me to reject the application, to admit the appellant to bail pending appeal.

Conclusion and Disposition

15. In light of all the foregoing, and the reasons that I have adduced in this ruling, I am satisfied that the applicant has made out a persuasive case for bail pending appeal.



16. Accordingly, the applicant's application is allowed. The applicant may be released on bail of Kshs 50,000/= plus One surety of similar amount or Cash bail of 20,000/= plus One contact person pending the hearing and determination of his appeal.
17. Let this file be closed.
18. Orders accordingly.
19. Right of Appeal 14 days.

DATED, SIGNED ON 19TH MAY, 2025 AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 20TH DAY OF MAY, 2025.

S.N MBUNGI

JUDGE

In the presence of :

Court Assistant – Elizabeth Angong'a.

