



**Lenonkulal & another v Republic (Criminal Appeal E009 of 2024)  
[2025] KEHC 7209 (KLR) (Anti-Corruption and Economic Crimes) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7209 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
CRIMINAL APPEAL E009 OF 2024**

**BM MUSYOKI, J**

**MAY 23, 2025**

**BETWEEN**

**MOSES KASAINI LENONKULAL ..... 1<sup>ST</sup> APPELLANT**

**HEZBON JACK WACHIRA NDATHI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**THE REPUBLIC ..... RESPONDENT**

**RULING**

1. This ruling is in respect of the appellant’s application dated 29<sup>th</sup> August 2024 in which the applicants were praying that;
  1. Spent.
  2. Pending the inter-parte hearing and determination of the applicant’s petition of appeal, this Honourable Court be pleased to grant the 1<sup>st</sup> and 2<sup>nd</sup> applicants herein, Moses Kasaine Lenolkulal and Hesbon Jack Wachira Ndathi bail/bond on such reasonable terms as the court shall deem fit.
  3. Pending inter-parte hearing and determination of the applicants’ petition of appeal, this Honourable Court be pleased to grant an order staying/suspending the execution of the judgement and sentence delivered on 28<sup>th</sup> August 2024 and 29<sup>th</sup> August 2024 in Nairobi ACCR No 3 of 2019 against the 1<sup>st</sup> and 2<sup>nd</sup> applicants herein.
  4. This Honourable Court be pleased to issue any orders and direction it deems fit and just.
  5. Costs of this application be provided for.



2. The application was supported by affidavit of the Isaac Renee dated 29-08-2024. In the said affidavit, it is deponed that the appeal has high chances of success and that there are exceptional circumstances associated with the health of the applicants which would justify granting of the application.
3. The respondent filed grounds of opposition dated 13<sup>th</sup> November 2024 and submissions dated 18<sup>th</sup> November 2024. I have given the applicants two chances to file their submissions but none was filed. I will therefore consider the application without the applicants' submissions.
4. The respondent has submitted that the appeal will not be rendered nugatory as there is no likelihood of the appellants serving the sentence or substantial part of it before the appeal is heard and determined. It has also submitted that the appeal has no chances of success and even if it had, that fact alone cannot constitute a ground for granting bail pending appeal because all the factors of consideration in such an application which include existence of exceptional circumstances must go together and lack of one of them makes the application non-meritorious. The respondent has also submitted that the appellants can seek medical attention for whatever sickness they have from the prison facilities.
5. I have read the application and the submissions of the respondent. I have given due consideration to the application and agonised over the history of the matter. It is notable that the Honourable Justice D. Kavedza admitted the applicants to bond through her ruling dated 30-08-2024. The application did not have a prayer for bail pending inter-parte hearing of the application as the two substantive prayers were for respective reliefs pending hearing and determination of the appeal. It appears in my opinion that once the bail/bond was granted on 30-08-2024 the application became spent.
6. I do not wish to go into the merits of the appeal at this stage but I discern from the ruling of Honourable Justice D. Kavedza dated 30-08-2024 that it discussed and covered almost all the grounds for an application for bail pending appeal. I must as a matter of principle avoid a situation where I may find myself discussing issues which have already been determined by my predecessor in respect of this application.
7. In the circumstances and noting that the appellants have been out on bond for the last nine months or so and have been attending court religiously, I will extend the bond terms granted on 30-08-2024 on strict condition that the appellants prosecute this appeal within the next ninety (90) days from the date hereof. This will ensure that the appellants do not abuse the discretion extended in their favour by delaying the determination of the appeal.
8. [In the premises I make the following orders;
  1. Subject to order 2 below, the appellants shall continue to enjoy bond terms set by Honourable Justice Dena Kavedza on 30-08-2024 pending hearing and determination of this appeal.
  2. This appeal shall be prosecuted within the next ninety (90) days failure to which the bond terms set in 1 above shall be considered cancelled.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF MAY 2025.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Judgment delivered in presence of Mr. Isaac Renee for the appellants and Mr. Mong'are for the respondent.

