



REPUBLIC OF KENYA



Republic v Njoroge (Criminal Case 19 of 2018) [2025] KEHC 5875 (KLR) (7 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5875 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 19 OF 2018**

HI ONG'UDI, J

MAY 7, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

COLLINS MAINA NJOROGE ACCUSED

RULING

1. Collins Maina Njoroge the Applicant filed the Notice of Motion dated 15th January, 2025 seeking to be released on bond/bail pending the hearing of an Appeal he has filed against his conviction and sentence by this court. The application is supported by the grounds on its face and the Applicant's supporting affidavit of even date.
2. The application is opposed vide the respondent's replying affidavit sworn on 24th March, 2025 by Emma Okok Principal Prosecution counsel.
3. The application was argued through written submissions.
4. In his submissions dated 8th March, 2025 Mr. Mongeri for the Applicant referred to the principles of granting bail pending appeal as set out in the case of Ademba V Republic 1983 KLR where the Court of Appeal held that;

“..... Bail pending appeal may only be granted if there are exceptional or unusual circumstances... the likelihood of success in the Appeal is a factor taken into consideration in granting bail pending appeal”.
5. Counsel submitted that the Applicant being a family man with children is sufficient reason to have him released on bond pending appeal. He added that the two families were willing to reconcile and the Probation report was in favour of having the Applicant serve non-custodial sentence.



6. He further contends that from the circumstantial evidence relied on by the honourable court, and despite the Applicant's alibi evidence, the Appeal has very high chances of success.
7. Thirdly, counsel submitted that the fact of the Applicant having been faithfully out on bond during the hearing of the matter should be factored in for him to be released on bond pending the hearing and determination of the Appeal. Reference was made to the case of Hisham Shally V Republic [2022] eKLR where Onginjo J reiterated the case of Charles Owanga Aluoch V Director of Public Prosecution [2015] eKLR, and granted bond pending appeal.
8. He also cited the case of Dominic Karanja V Republic where it was held:
 - a. The most important issue was that if the appeal had 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 were exceptional or unusual circumstances.
 - b. The previous good character of the applicant and the hardships if any facing his family were not an exceptional circumstance where there existed medical facilities for prisoners.
 - c. A solemn assertion by the applicant that he will not abscond if released, even if it is supported by sureties, is no sufficient ground for releasing a convicted person on bail pending approval.
9. In her submissions dated 24th March, 2025 M/s Emma Okok for the Respondent while referring to section 357(1) of the [Criminal Procedure Code](#) acknowledged that this court has the jurisdiction to hear the application
10. Counsel submitted on the principles governing the grant of bail pending appeal as set out in the case of Jivraj Shah V Republic [1986] eKLR which are as follows:
 - a. The existence of exceptional or unusual circumstances upon which the court can fairly conclude that it is just to grant bail.
 - b. 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.
 - c. The sentence or a substantial part of it will have been served by the time the appeal is heard.
11. It is her contention that no exceptional or unusual circumstances where the interests of justice would favour the grant of bail pending appeal had been demonstrated by the Applicant. She argued that there was no guarantee that the Applicant would attend court besides the sentence being a lawful one. On whether the appeal is likely to succeed counsel submitted that the issues raised in the application are those of fact with no legal question being raised.
12. Finally, she argued that the Applicant had just started serving sentence, and there was no danger of him serving a substantial portion of it before determination of the appeal.

Analysis and determination.

13. Having carefully considered the application, affidavits, both submissions, the law and case law I find the issue for determination to be whether the application herein is merited.
14. To start with, section 357(1) of the [Criminal Procedure Code](#) provides as follows:

“After entering of an appeal by a person entitled to appeal, the High Court or a 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 in the High Court, but a person so refused bail by a subordinate court may appeal against refusal to the High Court and not withstanding anything to the contrary in section 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”.

Thus, the application is properly before this court.

15. The principles governing release of one on bail/bond pending appeal have been clearly captured by both counsel in their submissions and the cited decisions.
16. The first principle is whether there are any exceptional or unusual circumstances raised to make this court consider granting the bond/bail sought. What the Applicant has submitted is that he is a family man with children. This was also part of his mitigation which this court considered before passing the sentence.
17. It is true that the pre-sentence report recommended a non-custodial sentence. Is the court bound by such recommendation? The court considered all the circumstances of the case alongside the pre-sentencing report and passed sentence. It is now the Court of Appeal to determine whether this court erred in not giving the Applicant a non-custodial sentence. I therefore find no exceptional or unusual circumstance raised of this court’s determination.
18. On whether the Appeal has very high chances of success what I would say is this: what has been filed and placed before this court is the Notice of Appeal indicating that the Applicant is challenging both the conviction and sentence. The conviction and sentence were passed by this court. Mr. Mongeri argues that the evidence relied on by this court was pure circumstantial evidence which did not displace the alibi defence of the Applicant. He adds that this court in any event never considered the Applicant’s alibi defence. My finding is that this is an issue for consideration by the Court of Appeal, since the Judgment speaks for itself. I do not therefore see the need of elaborating further on it.
19. When the Applicant first appeared before this court he was presumed innocent and was even released on bond. Right now, he has been convicted by a court of competent jurisdiction. Non-issuance of bond at this stage can not be said to be a violation of his right under Article 49(i) (h) of *the Constitution*.
20. The proceedings and Judgment were ready several months ago and the Record of Appeal is expected to have already been prepared and the necessary steps for appeal undertaken. Appeals in the Court of Appeal are being heard and disposed of expeditiously. There is therefore no way the Applicant will serve a substantial portion of the sentence before the Appeal is heard and determined. He still has an opportunity of applying for bond in the Court of Appeal.
21. The upshot is that the Application dated January 15, 2025 lacks merit and is dismissed.
22. Orders accordingly.

DELIVERED, VIRTUALLY THIS 7TH DAY OF MAY, 2025 IN OPEN COURT AT NAKURU

H. I. ONG’UDI

JUDGE

