



**Karanja v Republic (Criminal Appeal E018 of 2025)
[2025] KEHC 8765 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8765 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL APPEAL E018 OF 2025
CW MEOLI, J
JUNE 19, 2025**

BETWEEN

LESLEY KAMANDE KARANJA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the original conviction and
sentence in Kajiado CM's Traffic Case No. E101/2025)*

RULING

1. Lesley Kamande Karanja, the appellant herein (hereafter the Applicant) was arraigned before the subordinate court on a charge of Damage to weighbridge installation C/S 20(1)(g) as read with Section 21(1) of the East Africa Community Vehicle Load Control Act, 2016. He was convicted on his own plea of guilty on 4.03.2025 and sentenced to pay a fine of USD.10,000, ordered to pay the assessed costs of repair to the damaged installation and in default to serve two years imprisonment.
2. Aggrieved with the outcome the Applicant filed this appeal, followed by the chamber summons dated 25.03.2025, expressed to be brought under Section 357 of the Criminal Procedure Code. Seeking to be admitted to bail pending the hearing and determination of his appeal. The application was supported by the Applicant's affidavit in which he stated that he was serving sentence upon his conviction on a charge read to him in English, a language which he did not understand but to which he pleaded guilty. That being dissatisfied with the conviction and sentence he has lodged this appeal which he asserts to have high chances of success. He stated that not only was he a first offender, but also, he did not pose any danger to the society.
3. Further stating that he was the sole breadwinner of his young family and that his young wife had because of this turn of events threatened to leave the matrimonial home. Moreover, that he suffers from a medical condition that requires comprehensive medical care including constant medication and a



special diet that may not be available in prison. And pledging that he will undertake to attend court as and when required and adhere to any conditions that may be imposed. The Applicant's further affidavit dated 1.04.2025 reiterates his asserted medical condition and incorporates two documents proffered as evidence thereof.

4. At the hearing of the application on 18.5.2025, the Respondent, who had opted not to file a response indicated opposition to the motion which was thereafter orally argued. Counsel for the Applicant argued that his client ought to be granted bail pending appeal on the grounds that he suffers from a medical condition, that he is a first offender and that the charge laid against him was defective. He stated that the Applicant had a strong appeal. Further that the charge sheet is defective because Section 20(1)(g) the East Africa Community Vehicle Load Control Act, 2016 refers to damage of weighbridge installation while the charge sheet cites damage to weighbridge infrastructure. Hence, in his view, the appeal had overwhelming chances of success.
5. The Respondent urged caution, asking the court not to determine the appeal prematurely. Stating that bail pending appeal was not an absolute right, as there was no presumption of innocence in favour of the Applicant at this point. Further asserting that the appeal can be heard and determined in the shortest possible time, the Respondent stated that the Applicant could be offered medical treatment in prison, and that the alleged condition alone does not warrant the grant the orders sought.
6. Defending the charge sheet as proper, the Respondent pointed out that the Appellant was represented by counsel at plea taking. Reiterating therefore that the appeal has little chances of success, the Respondent urged that if the court was otherwise persuaded, it should impose stringent measures given the risk of the Applicant absconding to avoid the severe sentence imposed.

Analysis and Evaluation.

7. The court has considered rival positions taken by the parties through the affidavit in support of the motion, and the oral submissions. Accused persons are entitled to bail under Article 49(1)(h) of *the Constitution*. The provision states that "An accused person has the right ...(h)to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released." This right underscores the equally important right of such an accused to be presumed innocent until proven guilty.
8. However, in the case of a convicted person, the presumption of innocence has been extinguished and in its place is the presumption that such person was properly convicted after his trial. Therefore, the right to bail pending appeal as provided by Sections 356 and 357 of the *Criminal Procedure Code*, is at the discretion of the appellate court and governed by established jurisprudential principles. The above sections provide as follows, respectively:

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- 1) 357. (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:

The High Court, or the subordinate court which has convicted or sentenced a person, may grant bail or may stay execution on a sentence or order pending the entering of an appeal, on such terms as to security for the payment of money or the performance or non-performance



of any act or the suffering of any punishment ordered by or in the sentence or order as may seem reasonable to the High Court or the subordinate court. (2)....

.....”

9. In the case of *Charles Owanga Oluoch v Director of Public Prosecutions* [2015] eKLR it was held that:

“The right to bail is provided under Article 49(1) of *the Constitution* but is at the discretion of the court and is not absolute. Bail is a constitutional right where one is awaiting trial. After conviction that right is at the court’s discretion and upon considering the circumstances of the application. The courts have over the years formulated several principles and guidelines upon which bail pending appeal is anchored. In the case of *Jivraj Shah vs. R* [1966] KLR 605 [supra], the principal considerations for granting bail pending appeal were stated as follows:

“(1) The principal consideration in an application for bond pending appeal is the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it is in the interest of justice to grant bail.

(2) 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 argued and that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail exists.

(3) The main criteria is that there is no difference between overwhelming chances of success and a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed and the proper approach is the consideration of the particular circumstances and weight and relevance of the points to be argued.”

10. Here, the Applicant has asserted that his appeal has high chances of success, because the charge upon which he was convicted was defective. This he says, is because the description of the damaged item as per the charge did not correspond with words used in 20(1)(g) the East Africa Community Vehicle Load Control Act, 2016.

11. The statement of the offence in the charge sheet in the lower court which is before the court was that the Applicant caused damage to a weigh bridge installation, while the particulars thereof indicate the item damaged to be the “boom arm”.

12. Section 20(1) (g) of the said Act creates the offence of “damage to any weighbridge, weigh station, any weighing equipment or installation”. From submissions by the Applicant’s counsel, it is not readily evident how the charge was defective. Be that as it may, I agree with the Respondent that it may be premature to make any conclusive finding at this interlocutory stage. Thus, the court is not satisfied that there is a demonstration of an overwhelming chance that the appeal will succeed.

13. The underlying rationale for the consideration of the chances of success of an appeal, in an application of this nature, was spelt out by Trevelyan J (as he then was) in the case of *Somo –vs- R*. [1972] EA 476, at pg. 480 as follows: -

“There is little, if any point, in granting the application if the appeal is not thought to have an overwhelming chance of being successful, at least to the extent that the sentence will be interfered with so that the Applicant will be granted his liberty by the appeal court. I have used the word ‘overwhelming’ deliberately for what I believe to be good reason. It seems to me that when these applications are considered, it must never be forgotten that the



presumption is that when the Applicant was convicted, he was properly convicted. That is why, where he is undergoing a custodial sentence, he must demonstrate, if he wishes to anticipate the result of his appeal and secure his liberty forthwith, that there are exceptional or unusual circumstances in the case. That is why, when he relies on the ground that his appeal will prove successful, he must show that there is overwhelming probability that it will succeed.”

14. Subsequently in the case of Dominic Karanja-vs- Republic [1986] KLR 612, the Court of Appeal reiterated that:

“The most important issue was that if the appeal had such overwhelming chances of success, there was no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.”

15. It was also alleged that the Applicant suffers from a medical condition that requires constant medication, and that his family will be exposed to suffering not to mention a threat of desertion of the matrimonial home by his young wife. Starting with the former, the Applicant eschewed naming his alleged medical condition in his affidavit, while the annexure marked LKK1 (i) and ii both handwritten, and purportedly from the Kajiado County Hospital do not bear the full names of the authors, nor indicate who they are. The former does bear the author’s name and is unsigned though bearing the supposed stamp of the hospital’s medical superintendent.

16. The latter has the name Joseph endorsed at the bottom together with what appears to be a signature but without any indication of the qualification of the said person. In addition, it is not possible to tell from the scrawly handwriting therein whether the diagnosis was one of asthma or arthritis, which is why the Applicant ought to have disclosed the correct diagnosis, if any by his affidavit. No party should expect the court to act on the basis of this kind of material. This notwithstanding, there is no evidence that the alleged ailment is of such a nature as to put the Applicant’s life to peril. Nor has it been shown that the prison medical facilities would not suffice. No exceptional circumstance is demonstrated in that regard.

17. As regards the threat of marital discord or suffering of the family of the Applicant, these in the court’s view do not constitute exceptional or unusual circumstances. It is also unlikely that the Applicant would have served a substantial part of his two-year default sentence by the time the appeal is heard. I note that the lower court file and typed proceedings are already before this court and all that remains is for the Applicant to file the record of appeal to perfect the matter for hearing.

18. Considering all the foregoing, the court is not persuaded to exercise its discretion in the Applicant’s favour by granting the application dated 25.03.2025. The application is hereby dismissed. The court directs that the record of appeal be filed so that the appeal can be perfected and heard without delay.

DELIVERED AND SIGNED ELECTRONICALLY AT KAJIADO ON THIS 19TH DAY OF JUNE 2025.

C.MEOLI

JUDGE

In the presence of:

For the Applicant: Mr. Ayabei

For the Respondent: Mr. Kilunda

C/A: Lepatei

