



**Lekengele & another v Republic (Criminal Appeal
E019 of 2025) [2025] KEHC 7927 (KLR) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7927 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E019 OF 2025
AN ONGERI, J
JUNE 9, 2025**

BETWEEN

MIKAEL ISAYA LEKENGELE 1ST APPELLANT

ELIA ISAYA LEKENGELE 2ND APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Appellants filed this revision application under Section 347 of the *Criminal Procedure Code* Cap 75 Laws of Kenya, Article 49(1)(h), 50 and 159 of the *Constitution* of Kenya and all the enabling provisions of the law seeking the following orders:-
 - i. That the application be certified as urgent and the same be heard *ex parte* in the first instance.
 - ii. That the Honourable Court be pleased to admit the Applicants to Bail/Bond pending hearing and determination of this appeal.
 - iii. That upon granting of prayer (ii) above, the Honourable Court grant stay of execution of the conviction and sentence of the Hon. D. Wangeci delivered on the 4th day of March 2025 in Criminal Case No. E083 of 2025 pending the hearing and determination of the appeal herein.
2. The application is based on the following grounds:-
 - i. The Applicants herein together with 3 others were charged with the offence of entering into a protected area, contrary to Section 102(1)(a) of the *Wildlife Conservation and Management Act* Cap 376 and being unlawfully present in Kenya contrary to Section 53(1)(j) as read with Section 53(2) of the *Kenyan Citizenship Immigration Act*.



- ii. Sentencing was delivered on the 4th day of March 2025 wherein the Applicants was convicted for the offence in Count 1 and 2 as they are repeat offenders and thereafter sentenced on the 4th day of March 2025, for County 1 each to serve an imprisonment term of six months and Count 2 each to serve an imprisonment term of one year. Sentence to run concurrently.
 - iii. The Applicants are currently serving their sentence at Wundanyi Maximum Security Prison in Taita Taveta County.
 - iv. The Applicants appeal has overwhelming chances of success as the conviction was not founded on the principles of law in which a court can establish that the prosecution had proved its case beyond reasonable doubt.
 - v. As a prerequisite, a convicted person should not suffer incarceration before the due process is exhausted since the mental and physical damage that will be suffered by the Applicants is incarcerated may never be undone after a successful appeal.
3. The parties filed written submissions as follows:-
 4. The Appellants submitted that they are seeking bail/bond pending appeal and further that their intended appeal has high chances of success, rendering their continued imprisonment prejudicial if the appeal is ultimately granted.
 5. They contend that their constitutional right to challenge the trial court's decision would be undermined if bail is denied, as the appeal could become nugatory.
 6. Additionally, they assert that the trial magistrate failed to warn them of the consequences of their guilty plea, violating their right to a fair trial under Article 50(2) of the Constitution.
 7. The Appellants further submitted that the magistrate erred in not imposing an option of a fine, despite their remorse and the circumstances of their offense (searching for lost cattle).
 8. They cited judicial precedents emphasizing that where the law provides for a fine, it should be considered unless compelling reasons justify imprisonment. They highlight that co-accused persons were granted fines, making their sentences disproportionately harsh.
 9. The Respondent opposes bail, asserting that the Appellants, as foreigners convicted of unlawful presence in Kenya, pose a flight risk.
 10. They also submitted that the guilty plea was properly entered and that the sentences were lenient compared to statutory provisions.
 11. In conclusion, the Appellants submitted the court to grant bail pending appeal or, alternatively, impose a reasonable fine, aligning with principles of fairness, judicial precedent, and sentencing guidelines.
 12. The issues for determination in this application are as follows:-
 - i. Whether the Applicants should be granted bail pending appeal.
 - ii. Whether the Applicants should be granted an option of a fine.
 13. On the issue of bail pending appeal, I find that the Respondent conceded the same and I see no reason to deny the applicants bail pending appeal.
 14. The Appellants' application for bail pending appeal is hereby allowed. Each Appellant shall be released upon posting a cash bail of Kshs. 10,000/-, pending the hearing and determination of their appeal. The bail terms shall ensure their attendance in court whenever required.



15. Regarding the alternative plea for an option of a fine in lieu of imprisonment, this court finds that the issue is intricately tied to the merits of the appeal.
16. Consequently, a definitive ruling on this matter shall await the full hearing and determination of the appeal, where the legality and proportionality of the sentence will be thoroughly examined.
17. The Appellants shall comply with all bail conditions, and any violation may result in the immediate revocation of bail.
18. The appeal shall be expedited to ensure timely justice.

DATED, SIGNED AND DELIVERED THIS 9TH DAY OF JUNE 2025 IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

