



REPUBLIC OF KENYA



KENYA LAW
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**Wafula v Republic (Criminal Appeal E020 of 2025)
[2025] KEHC 8184 (KLR) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8184 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL APPEAL E020 OF 2025
REA OUGO, J
JUNE 9, 2025**

BETWEEN

DANIEL WAFULA APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant seeks to be released on bail pending appeal. I have considered his application and the respondent's response. He pleaded guilty to an offence of burglary and theft and was sentenced to 4 and 3 years, respectively. He is dissatisfied with the conviction and sentence and has filed an appeal.
2. In his supporting affidavit, he avers that there are exceptional and unusual circumstances that warranted his being granted bail and that he was not warned of the seriousness of the charges. He also pleaded guilty. He further alleges that the investigating officer tricked him into pleading guilty to the charges, assuring him that he would be placed on probation. His appeal has an overwhelming chance of succeeding.
3. The applicant relied on his supporting affidavit. The respondent filed written submissions. The respondent opposes the application. It is submitted that the application does not raise any exceptional or unusual circumstances. His allegation that he was tricked by the investigating officer is not substantiated and was not raised at the trial. From the memorandum of appeal filed, no ground clearly discloses any chance that the appeal will be allowed. The plea was unequivocal; hence, at appeal, the appellate court's role will be to ensure the sentence is lawful. The application lacks merit.



4. The principles for granting bond pending an appeal were set out in the case of *Jivraj Shah v Republic* [1986] KLR 605 which laid down the principles 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 face* 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.”

5. I concur with the Respondent’s submissions that the reasons provided by the applicant do not constitute exceptional or unusual circumstances. The applicant has not presented this court with evidence of exceptional and extraordinary circumstances that would justify bail pending appeal. His grounds for appeal are acknowledged alongside the proceedings before the trial court. I must exercise caution not to engage with the merits or demerits of the appeal. Appeals in this court are considered in an expeditious manner. The appellant has lodged an appeal; he should pursue it. His application lacks merit and is therefore dismissed.

DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 9TH DAY OF JUNE, 2025

R.E. OUGO

JUDGE

In the presence of:

Mr. Were - For the Appellant

Mr. Mararo -Respondent

Wilkister -C/A

