



**Kiiya & another v Republic (Criminal Appeal E103 of 2024)
[2025] KEHC 10258 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10258 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E103 OF 2024
HM NYAGA, J
JULY 10, 2025**

BETWEEN

GERALD KAUME KIIYA 1ST APPELLANT

JAPHET MUTEMBEI KIIYA 2ND APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Appellant were charged before the Principal Magistrate Court at Tigania with the offence of grievous harm, contrary to Section 234 of the [Penal Code](#).
2. The particulars of the offence were that on 30th day of October, 2020 at Thubuku Location in Tigania East Sub-county within Meru County. Jointly with another not before court unlawfully did grievous harm to Margaret Wanjiku.
3. After a full trial each of the appellants were convicted and sentenced to 7 years imprisonment. Aggrieved by the conviction and judgment, the appellant filed a Petition of appeal dated 11th October, 2024, which set out the following grounds:-
 - a. That the Learned trial magistrate erred in law and in fact by not properly analyzing, the evidence adduced and hence arrived at an erroneous conviction not supported by evidence and law.
 - b. That the learned trial magistrate erred in law and in fact by not properly analyzing, the evidence adduced and hence arrived at an erroneous conviction not supported by evidence in law.
 - c. That the learned trial magistrate erred in fact and law by failing to consider the mitigation of the appellants herein and arrived at a very harsh sentence.



- d. The learned trial magistrate meted out a sentence that was too harsh in view of the entire circumstances of the case.
 - e. That the learned trial court erred in law and in fact by failing to grant the accused persons herein an alternative of a fine.
4. The appellants then moved the court vide an application dated 19th November, 2024 in which they seek bond/bail pending hearing and determination of the appeal. The applicants case is that their appeal has a likelihood of success and if they are not granted bail, they may suffer prejudice as they will have suffered a substantial part of the sentence. They also aver that they are not a flight risk and that they duly attended court during the trial, while out on bond.
 5. The state opposed the application. It is argued that the appeal does not have any chance of success. That there are not exceptional circumstances set out by the appellants. That they should set the appeal down for hearing.
 6. Section 357 of the *Criminal Procedure Code* (CPC) provides as follows:-
 - “(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: 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 to the High Court, but a person so refused bail by a subordinate court may appeal against refusal to the High Court and, notwithstanding anything to the contrary in sections 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.
 - (2) If the appeal is ultimately dismissed and the original sentence confirmed, or some other sentence of imprisonment substituted therefor, the time during which the appellant has been released on bail or during which the sentence has been suspended shall be excluded in computing the term of imprisonment to which he is finally sentenced.”
 7. The principles to be applied in a case like this one were set out in *Masrani v R* [1960] EA 321 where it was held that:

“Different principles must apply after conviction. The accused person has then become a convicted person and the sentence starts to run from the date of his conviction.”
 8. In *Charles Owanga Aluoch 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 *Jiv Raji Shah v R* [1966] KLR 605, the principle considerations for granting bail pending appeal were stated as follows:



- (1) Existence of exceptional or unusual circumstances upon which the court can fairly conclude that it is in the interest of justice to grant bail.
- (2) It appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of a 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, then, a condition of granting bail will exist.

Main criteria is that there is no difference between overwhelming chances of success and set of circumstances which disclose substantial merit in the appeal – being allowed, the particular circumstances and weight and relevance of the points to be argued.”

9. This position was restated in *Mutua v R* [1988] KLR 497, where the Court of Appeal stated:

“It must be remembered that an applicant for bail has been convicted by a properly constituted court and is undergoing punishment because of that conviction which stands until it is set aside on appeal.”

10. I have considered the matter. The appellants were convicted and sentenced on 30th September, 2024. They filed this appeal within time.

11. 7. At this stage, it would not be appropriate to look at the grounds of appeal, although the court can do so in case there is an outstanding/special circumstance. I find no over circumstances herein.

12. 8. It is noted that the lower court record has already been forwarded to this court. There are no undue delays in hearing appears in this court at the moment.

13. Considering all factors I decline to grant the orders sought and instead issue the following directions: -

- a. The appeal is admitted.
- b. The appellants to file and solve the record of Appeal in the next 21 days.
- c. Thereafter, the appeal to be canvassed by way of written submissions as follows:-
 - i. Appellant within 14 days
 - ii. Respondent within 14 days
- d. Mention date for compliance to be given shortly.

DATED, SIGNED AND DELIVERED AT MERU THIS 10TH DAY OF JULY 2025.

H. M. NYAGA,

JUDGE.

