



**Omondi v ODPP (Criminal Revision E184 of 2025)  
[2025] KEHC 13126 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13126 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL REVISION E184 OF 2025  
WM KAGENDO., J  
SEPTEMBER 17, 2025**

**BETWEEN**

**JACKSON GORDON OMONDI ..... ACCUSED**

**AND**

**ODPP ..... PROSECUTOR**

**RULING**

1. The applicant was charged and convicted on three (3) counts of the offense of Offensive Conduct contrary to Section 94 (1) of the Penal Code and was sentenced to pay a fine of kshs.20,000/- for each count and/or serve one (1) year imprisonment.
2. In an omnibus homemade application dated 26<sup>th</sup> May, 2025, the applicant seeks an order of Habeas Corpus and his release from prison on reasonable cash bail and bond terms pending appeal. However for the purposes of this Ruling, as agreed by the parties herein, the issue on bond/cash bail terms shall take center stage.
3. The respondent through Prosecution Counsel Mr. Sirima conceded that the respondent was not opposed to the application.

**Analysis and Determination**

4. The provisions of Section 357 (1) of the Criminal Procedure Code provide for admission to bail pending appeal, in the following terms:

“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.”

5. Whilst Article 49(1)(h) of *the Constitution* provides that an accused person has the right to be released on bond or bail, on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released, a similar position does not apply for a convicted person.
6. In the case of *Charles Owanga Aluoch v Director of Public Prosecutions* [2015] eKLR it was held that:

“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) 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.”
7. In this instance, as earlier noted the applicant was charged with three (3) counts of the offense of Offensive Conduct contrary to Section 94 (1) of the Penal Code and upon conviction, he was sentenced to pay a fine of kshs.20,000/- for each count and/or serve one (1) year imprisonment.
8. He argues that he is diabetic and ever since his incarceration on the 15<sup>th</sup> of April, 2025, he has not been able to partake of his medication. Further, that he is suffering from serious back pains caused by the dislocation of his back-bone in 2022, which requires physiotherapy which is not available at the prison.
9. Further, that the applicant is not a flight risk, whilst he is committed to ensure his appearance in court.
10. This notwithstanding, as per the threshold set in *Jiv Raji Shah v R* [1966] KLR 605, the charges the applicant was convicted of are misdemeanors, to which end he has since served five (5) months of the alternative sentence of (1) year issued against him, he may inadvertently end up serving a substantial part of the sentence by the time the appeal is heard and determined.
11. Taking the foregoing into account I am satisfied that this is a case where the applicant is entitled to be availed the opportunity to test the conviction by appealing, whilst on bail/bond.
12. I hereby allow the applicant bail pending appeal on the following conditions:
13. The applicant may be released on cash bail of Kshs.5,000/= or a surety of similar amount to be verified by the Deputy Registrar.



14. The applicant shall report at Bamburi Police Station on the last day of each month commencing upon his release, and a record of such attendance shall be maintained by the officer-in-charge of the Police Station. Such record may be called for at any time by the court.

15. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 17TH DAY OF SEPTEMBER, 2025.**

**W.K. MICHENI JUDGE**

**IN THE PRESENCE OF;**

For the Applicant(s).....in person

For the Respondent.....Mr Ngiri and Mr Sirima

Court Assistant.....Bebora

Signed By/For:

HON. LADY JUSTICE WENDY MICHENI

**THE JUDICIARY OF KENYA.**

**MOMBASA HIGH COURT**

**HIGH COURT CRIMINAL**

**DATE: 2025-09-18 13:16:29**

