



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kamau & 4 others v Republic (Criminal Appeal 39, 40, 41, 42 & 43 of 2022) [2023] KEHC 1736 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1736 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CRIMINAL APPEAL 39, 40, 41, 42 & 43 OF 2022**

**M MUYA, J  
MARCH 9, 2023**

**BETWEEN**

**LYDIA WANJIRU KAMAU ..... 1<sup>ST</sup> APPELLANT  
HANNA WAITHERA WAWERU ..... 2<sup>ND</sup> APPELLANT  
JANE WAHITO KARIENYA ..... 3<sup>RD</sup> APPELLANT  
JEMIMAH NJERI KIBURI ..... 4<sup>TH</sup> APPELLANT  
ANTONY GITHAIGA NYAGA ..... 5<sup>TH</sup> APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicants above mentioned were jointly charged with the offence of grievous harm contrary to 234 of the *Penal code* and were convicted by Hon Bosibori RM sitting at Mukurweini court and sentenced to five years imprisonment.
  1. The Notice of Motion application dated November 28, 2022.  
Seeks for an order that the five applicants be admitted to bail pending appeal.
  2. The grounds are that the appeal has high chances of success and that if not released they will have served substantial part of the sentence rendering the appeal nugatory.
  3. In the supporting affidavit of Kiminda (counsel for the applicants)  
It is contended that the attack occurred at night by a mob and identification was a challenge.
  4. Secondly that some witness statements were sourced when the case was already at the trial stage and hence used to fill the lacuna.



That by reason of the foregoing the appeal has high chances, of success.

5. The application is opposed, on the grounds that bail pending hearing and determination of an appeal is not a right as envisaged under article 49 (1) of the Constitution.
  6. That the intended appeal is weak and does not have high chances of success that there does not exist any peculiar and or exceptional circumstances to persuade the Court to grant the application.
  7. Lastly, the applicants are serving long imprisonment term and there is no chance and or opportunity to serve the whole term before the appeal is heard and determined.
  8. The court has had the opportunity of perusing the evidence on record and is of the considered view that this application has merit.
2. Pending the hearing and determination of this appeal the applicants may be released on a bond of Kshs 100,000/= with one surety of similar amounts.

**RULING DELIVERED, DATED AND SIGNED AT NYERI IN OPEN COURT THIS 9<sup>TH</sup> DAY OF MARCH, 2023.**

**HON. JUSTICE M. MUYA**

**JUDGE**

**In the presence of counsels:**

Kiminda .....Appellant/Applicants

Mwangi .....Respondent

Court Assistant: Kinyua

30 days R/A.

