



**Nzivo v Republic (Criminal Appeal E049 of 2023)
[2023] KEHC 20643 (KLR) (20 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20643 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL APPEAL E049 OF 2023**

**A. ONG'INJO, J
JULY 20, 2023**

BETWEEN

PATRICK TUSAO NZIVO APPELLANT

AND

REPUBLIC RESPONDENT

RULING

Application

1. The Notice of Motion application dated June 16, 2023 was brought under Section 356 (1) and 357 (1) of the *Criminal Procedure Code* and all other enabling provisions of the law seeking for orders that the Honourable Court be pleased to admit the appellant to bail/bond pending the hearing and determination of the appeal.
2. The application is premised on grounds that the appellant has filed an appeal against his conviction and sentence and if the appeal is successful the appellant would have served a good portion of the sentence and subsequent reversal of the decision sought to be appealed will not undo the damage he will have suffered as a result of his incarceration.
3. It is pleaded that the appeal raises substantial legal issues with overwhelming likelihood of success. That by the time the appeal is heard and determined the appellant will have served a good portion of the sentence and subsequent reversal of the decision sought to be appealed will not undo the damage he will have suffered as a result of his incarceration. The appellant stated that he was on bond during trial and did not abscond court. He also stated that the appellant is ready and willing to abide by any terms as to security that the court may impose as a precondition for his release on bail/bond pending appeal.
4. The application was brought to the attention of the Respondent on July 5, 2023 but there is no response filed.



5. In consideration of the letter dated June 16, 2023 written by the County Prison Commandant Kwale County, SSP Ali M Hassan and in consideration of the medical report dated April 11, 2023 that the appellant's health is deteriorating and is dependent on other inmates to bathe and feed him, this court finds that these are exceptional circumstances that warrant an order for bail pending appeal so that his relatives can accord him the necessary and appropriate medical attention as his appeal is being processed. The appellant may be released on a bond of Kshs 200,000 with a surety of a similar amount to attend court as and when required starting with August 2, 2023.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,
THIS 20TH DAY OF JULY 2023**

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Ogwel- Court Assistant

Mr. Ngiri for Respondent**

Appellant present in person

HON. LADY JUSTICE A. ONG'INJO

JUDGE

