



**Wanjala v Republic (Criminal Appeal E094 of 2024)  
[2024] KEHC 11873 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11873 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL APPEAL E094 OF 2024**

**DK KEMEL, J**

**OCTOBER 4, 2024**

**BETWEEN**

**CLIVETON WANJALA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Appellant herein filed an application dated 21<sup>st</sup> August, 2024 seeking for an order that he be released on bond pending the determination of the appeal. The application is supported by the affidavit of the Appellant sworn on even date. The Appellant’s gravamen is that his appeal has high chances of success and that he might end up serving the one year imprisonment before the appeal is heard. It was also his case that he had not jumped bail in the lower court.
2. The State is opposed to grant of bail and in an affidavit in opposition to bail, sworn on 16<sup>th</sup> September 2024, by Joseph Chesaro, a Police Officer, wherein he averred that the Applicant was charged with the offence of breaking into a building and committing a felony contrary to section 306 (a) of the Penal Code. That Judgement was delivered whereupon he was convicted and subsequently sentenced. According to him, he was duly advised by the State Counsel that the Applicant herein has failed to demonstrate that his appeal has high chances of success.
3. He averred that the Applicant was already convicted and thus cannot invoke the provisions of Article 50 (2) (a) of the Constitution of Kenya. He insisted that the Applicant has not availed nor demonstrated any peculiar or exceptional circumstances to warrant the grant of the orders sought.
4. He averred that despite bail/bond being a constitutional right, the same is not absolute and Courts have the discretion to disallow the same as per the dictates of Article 49 of the Constitution of Kenya.
5. The application was canvassed by way of written submissions. Only the Respondent filed their written submissions.



6. The Respondent's contention in this matter is that the Applicant had not demonstrated the existence of exceptional or unusual circumstances to warrant the orders sought and that since the Applicant was already convicted by the trial Court, the provisions under Article 50 of the Constitution of Kenya do not apply to him.
7. I have given due consideration to the application and the rival affidavits as well as the submissions filed. The only issue for determination is whether the application has merit.
8. The Courts have over the years formulated several principles and guidelines upon which bail pending appeal is anchored. In the case of JivRaji Shab v R [1966] KLR 605, the principle considerations for granting bail pending appeal were stated as follows:

- “(1) The principle 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 facie 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 exist.
- (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.”

9. Bond or bail pending appeal is provided for under Section 357 of the Criminal Procedure Code (CPC). It provides;

“357. Admission to bail or suspension of sentence pending appeal

- (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.

(3) The Chief Justice may make rules of court to regulate the procedure in cases under this section.”

10. It is clear that this Court has powers to grant bond/bail pending Appeal.
11. Thus, the considerations for the Court to grant or deny bond pending appeal are:
  - a. That the Appeal has overwhelming chances of success.
  - b. Previous good character of the Applicant
  - c. The existence of exceptional or unusual circumstances.
  - d. The sentence or substantial part of it will have been served by the time the Appeal is heard.
12. I have considered the Appeal filed. Evidently, it does not raise any substantial or weighty point of law. It is essentially founded on facts and the findings of the trial Court.
13. At this stage, the Court ought to be cautious not to try and determine the Appeal. This should await the appropriate time.
14. The grounds adduced by the Applicant call for the Court to re-evaluate the evidence as it is obliged to. (see *Okeno v Republic*).
15. In my opinion, there are no exceptional or unusual circumstances that would necessitate the grant of the orders sought.
16. It must be remembered that during the trial, the Applicant was presumed to be innocent. Right now, he has been convicted by the Court of competent jurisdiction. Thus, the Application of Article 49 (1) (h) of the Constitution do not apply to the Applicant.
17. At present, this Court is handling Appeals at a very exceptional rate. There are really no unreasonable delays in determining the same. The Applicant was only convicted in August 2023. Most appeal are usually wrapped by way of written submissions and determined expeditiously. The same will be the position in the present case. I am of the opinion that this is an appeal that can be heard and determined in the shortest time possible.
18. Consequently, I find the Appellant’s application dated 21<sup>st</sup> August, 2024 lacks merit. The same is dismissed with no orders as to costs. The Applicant is hereby directed to proceed and file the Record of Appeal within seven (7) from the date hereof. The Deputy Registrar is directed to call for the lower court record and initiate the admission of appeal. The matter is fixed for mention on 22.10.2024 to confirm compliance.

**DATED AND DELIVERED AT BUNGOMA THIS 4<sup>TH</sup> DAY OF OCTOBER, 2024.**

**D. Kemei**

**Judge**

In the presence of:

Wamalwa for Applicant

Miss Mwaniki for Respondent



