



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ambugo & another v Republic (Criminal Appeal E062 of 2024)  
[2024] KEHC 14855 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14855 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
CRIMINAL APPEAL E062 OF 2024  
A. ONG'INJO, J  
NOVEMBER 7, 2024**

**BETWEEN**

**JOHN CHWANDO AMBUGO ..... 1<sup>ST</sup> APPELLANT**

**MICHAEL OTIENO OKONGO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From original conviction and sentence by Hon. S. N. Mutava Resident Magistrate in Principal Magistrate's Court at Rongo in Criminal Case No. E. 247 of 2022 delivered on 30/5/2024)*

**RULING**

1. Before me is the Application dated 24/6/2024 in which the Appellants, John Chwando Ambugo and Michael Otieno Okongo seek to be admitted to bail or bind pending the hearing of this Appeal.
2. The Appellants were convicted by the Resident Magistrate in Rongo PM Court in Criminal No. E247 of 2022 for the offence of obtaining Registration of Certificate of Death by false Pretense contrary to Section 320 of the Penal Code in Count I and the offence of giving false information to a person employed in the Public Service contrary to Section 129 (a) of the Penal Code in Count II.
3. They were subsequently fined Kshs. 100,000 and Kshs. 50,000 each and in default to serve 3 years imprisonment on the 13.6.2024 on each count. The Appellants have since lodged an Appeal in the High Court against the Judgment of the Subordinate Court.
4. The Appellants claim is that they shall suffer substantial loss or injury to their liberty not capable of compensation by whatsoever means. The Appellants further contended that their appeal has overwhelming chances of success and raises substantial issues of law as the judgement and sentence was arrived at without appreciating the evidence on record especially evidence of PW5,6 & 8 which were established to have been at variance and the exhibits had glaring inconsistencies.



5. The 1<sup>st</sup> Appellant John Chwando Ambugo was said to be suffering from serious health and mental issues and he needed to be catered for by his family physician and thus prays to be released on bond to enable him seek medical attention; that he was on bond during his trial and complied with all the terms and is therefore not a flight risk.
6. The application was supported by the grounds on the body of the application and supporting affidavit of John Chwando Ambugo. The Respondent did not file any response to the application and when directions were taken that the application be heard by way of written submissions parties did not file submission.
7. Section 357 of the Criminal Procedure Code provides for bail/bond pending Appeal. It reads as follows;-
  - iii. After the entering of an appeal by a person entitled to appeal, the high court , of 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 nor 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.
  - iv. Provided that, where an application for bail is made to the subordinate court and is refused by that court, no further applicants 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 Section 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.”
8. In Charles Owanga Aluoch vs. DPP (2015) eKLR the Court said:-
  - i. 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.
  - ii. After conviction, that right is at the court’s discretion and upon considering the circumstances of application the court have over the years formulated several principles and guidelines upon which bail pending appeal is anchored.”
9. While the above section provides the statutory mechanism for the grant of Bail / Bond pending Appeal, the same is not automatic and the court has to exercise its discretion on whether or not to grant bail / bond pending appeal. The criteria upon which the court may grant bail pending appeal were discussed in the Jivray Shah vs. Republic (1986) which are as follows:
  - iii. (1) The principal consideration in an application for bond pending appeal is the existence of exceptional or unusual circumstances upon which eh Court of Appeal can fairly conclude that it is in the interest of justice to grant bail
  - iv. (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 exists.
  - v. (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.”



10. This court has considered the grounds upon which the application has been made together with the grounds of appeal and find that the Applicants have an appeal with substantial issues of law and that they should be given a chance to exercise their right to appeal so that the court relooks their claim to confirm or otherwise deal with the appeal. The Applicants will therefore be released on their own bonds of Kshs. 100,000/= each with a surety of a similar amount pending expeditious hearing and determination of the appeal herein.
11. Mention 5.12.24 for directions.

**DELIVERED DATED AND ASSIGNED AT MIGORI THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**A. ONGI'NJO**

**JUDGE**

