



**Rasugu v Republic (Criminal Appeal E105 of 2024)
[2024] KEHC 14625 (KLR) (4 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14625 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL APPEAL E105 OF 2024
TA ODERA, J
NOVEMBER 4, 2024**

BETWEEN

CHARLES ICHWARA RASUGU APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant filed the application dated 4.10.24 seeking:
 - i. spent.
 - ii. That This court be pleased to admit the applicant to bail pending appeal.
 - iii. Any further orders that the court may deem fit to grant.
2. The application is based on the annexed affidavit of Charles Ichwara Rasugu and on the grounds that;
 - a. The applicant is currently serving 2 years sentence upon being convicted in respect of the charge of malicious damage to property contrary to section 339 (1) of the *Penal Code*.
 - b. The applicant is of ill health suffering from liver cirrhosis with sarcoidosis which gets worse during the cold and rain season for which he requires medical attention while at home.
 - c. It is in the interest of justice that the applicant be admitted to bail to enable him access treatment at home.
3. The applicant deponed that he is suffering a 2-year sentence upon conviction by Hon. Caroline Ocharo – Chief Magistrate on 30.9.24 on the charges of malicious damage to property contrary to section 339 (1) of the *Penal Code* as per copy of judgment (“CIR -1”).



4. Also that he was dissatisfied with the said judgment and he proceeded to file the instant appeal as per notice and memorandum of appeal (“CIR2a and b” respectively).
5. Further that he now seeks bond pending appeal as he is suffering from liver cirrhosis with sarcoidosis whose treatment is not readily available in prison. He annexed the medical report (“CIR 3”).
6. He told this court that he is ready to abide by such terms as this court may deem fit to grant.
7. The prosecution did not oppose the application; however, this court still has a duty to consider the
8. I have carefully considered the application the submissions by the applicant and the law.

Section 357 of the [Criminal Procedure Code](#) provides for bail pending appeal in the High court to wit:
- “

- (1) After 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”.
9. The principles for granting bail pending appeal were set out in the case of [Jivraj Shah v Republic](#) [1986] eKLR as follows: -
 - a. The existence of exceptional or unusual circumstances upon which a court of appeal can fairly conclude that it is in the interest of justice to grant bail.
 - b. Whether the appeal has overwhelming chances of success.
 - c. Whether there is a likelihood of the appellant having served a substantial part of the sentence by the time of appeal is heard and determined.
 10. On whether there are exceptional circumstances upon which this court can conclude that it is in the interest of justice that the applicant be granted bail. The applicant says that he suffers from liver cirrhosis with sarcoidosis as per the medical report which he has annexed to his affidavit. This is not challenged. This is a ground for granting bail.
 11. On the chances of appeal, this is a matter of trial as I am yet to see the response by prosecution.
On whether there is likelihood that the appellant will have served a substantial part of the sentence by the time the appeal is determined, the sentence is of 2 years and it is clear that by the time the appeal is heard and determined he may have served a substantial part of the sentence.
 12. In the upshot, I am satisfied that the applicant has established the grounds for granting bond pending appeal.
 13. I grant the applicant bond of Kshs 100,000/= with surety in the like sum pending hearing and determination of the appeal herein.
 14. The Record of appeal be filed and served within 30 days from today. Mention on 27.1.25 for compliance.

T.A ODERA

JUDGE

4.11.24



Delivered virtually in the presence of:
Ondima and Mr. Ochoki for the Applicant
Koima for State
Court Assistant -Oigo

