



REPUBLIC OF KENYA



KENYA LAW
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**Chege v Republic (Criminal Appeal E032 of 2025)
[2025] KEHC 13372 (KLR) (Crim) (23 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13372 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E032 OF 2025
AM MUTETI, J
SEPTEMBER 23, 2025**

BETWEEN

JULIUS NJUGUNA CHEGE APPELLANT

AND

REPUBLIC RESPONDENT

*(Appeal against the Judgment and sentence Hon. P.K Mutai on
10th June 2025 in Criminal Case No. E017 of 2022 at Milimani)*

RULING

1. The applicant by way of a Notice of Motion dated 11th August 2025 brought under Certificate of urgency moved this court for grant of bail pending appeal.
2. The application was expressed to be brought under Section 356 and 357 of the Criminal Procedure Code.
3. The main ground advanced by the applicant for grant of bail is that he is ailing and requires a special diet which is not available in prison.
4. He further argues that the prosecution did not prove its case against him beyond a reasonable doubt thus his appeal has overwhelming chances of success.
5. At paragraph 4 of his affidavit in support the applicant contends that if he is not admitted to bail pending the hearing of the appeal he is apprehensive that the intended appeal may be had in determined long after he has served sentence thus rendering their appeal nugatory.



6. The application is opposed by counsel for the state who argues that the condition of afflicting the applicant is one that can be managed with the prison health facility thus this court should not be inclined to grant bail on that ground.
7. The prosecution counsel submitted that the offense with which the applicant was charged carries a mandatory sentence and that the applicant has not addressed the courts on how the appeal would be rendered nugatory if not released on bail pending appeal.
8. The law on bail pending appeal is well articulated in the case of *Jivraj Shah Vs. Rep* (1986) KLR in which the court held:-

There is not a great deal of local authority on this matter and for our part such as we have seen and heard tends to support the view that the principal consideration is if there exist exceptional or unusual circumstances upon which this court can fairly conclude that it is in the interest of justice to grant bail. 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 urged, and that the sentence or a substantial part of it, will have been served by the time the appeal is heard, conditions for granting bail will exist. The decision in *Somo v Republic* [1972] EA 476 which was referred to by this court with approval in *Criminal Application No NAI 14 of 1986, Daniel Dominic Karanja v Republic* where the main criteria was stated to be the existence of overwhelming chances of success does not differ from a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed. The proper approach is the consideration of the particular circumstances and the weight and relevance of the points to be argued. It is almost self-defeating to attempt to define phrases or to establish formulae.” 11. In *Francis Kamote Mutua v Republic* [1988] eKLR, this Court held that: “It must be remembered that a person has been convicted by a properly constituted Court, and is undergoing punishment, because of that conviction, which stands until set aside on appeal. It is not wise to intervene either from the point of view of the welfare of the Appellant or the State, unless there is a real reason why the Court should hold that he should not be deprived of his liberty. The best test of that consideration is whether the Appellant can show an overwhelming chance of establishing his right to be set at liberty. If he does not do so, the law should take its ordinary course.”

9. The key consideration is the existence of overwhelming chances of success but the existence of exceptional circumstances too could also be a basis for the grant of bail pending appeal.
10. The fact that one is likely to serve a substantial part of the sentence before the hearing and determination of his appeal is an exceptional circumstance.
11. The processing of appeals in our court has often been delayed by the delay in typing of the proceedings of the law of courts which in turn delays the preparation of records of appeal.
12. The scenario calls for striking of a delicate balance by the courts to ensure that person seeking bail pending appeal and are serving who have a short sentences do not stand the risk of serving a substantial part of the sentence before their appeals are heard.
13. The applicant in this matter was sentenced to a fine of Kshs. 10,000,000 in default to serve a 3 years sentence.
14. It is the view of this court that 3 years is relatively short sentence given that the applicant is entitled to a remission,



15. The likelihood of him serving a substantial part of the sentence is real thus it would be in the interests of justice to grant him bail pending appeal.
16. In the end the applicant is ordered to be released a bond of Kshs. 1 million plus on surety of similar amount.
17. The appeal will be mentioned on the 23rd October 2025 to confirm the status of the record and for issuance of further directions in the matter.
18. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF SEPTEMBER 2025.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Kiptoo

Kung'u for the Applicant

Ms Ogega for the Respondent

Applicant

