



**Nkonge v Republic (Criminal Appeal (Application) 56 of 2022)  
[2025] KECA 1598 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1598 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPEAL (APPLICATION) 56 OF 2022  
W KARANJA, J MOHAMMED & LK KIMARU, JJA  
OCTOBER 3, 2025**

**BETWEEN**

**EPHANTUS MUGAMBI NKONGE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for bail pending determination of an appeal  
from the judgment and sentence of Chuka High Court (Limo J.)  
delivered on 31st May, 2022 in Criminal Case No. 28 of 2018)*

**RULING**

1. The applicant, Ephantus Mugambi Nkonge, was charged before the High Court at Chuka, with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence alleged that on 10<sup>th</sup> August, 2018, at Kaare Market Centre, Kaare Location, Ntune Sub-Location, Maara Sub-County within Tharaka Nithi County, the applicant, with others not before court, murdered one Gilbert Gitonga Githinji.
2. A summary of the case by the prosecution was that on the night of 9<sup>th</sup> August, 2018, at about 10.00 p.m., a fight ensued between the applicant and the deceased. PW2 and PW4 told the court that they got to the applicant's house at the said time and found the applicant beating up the deceased person. The deceased's hands were tied at the front with a rope. It was the prosecution's case that during the scuffle, the deceased managed to get hold of a panga which he used to strike the applicant, and managed to flee the scene.
3. The prosecution witnesses testified that the applicant received first aid at a nearby chemist after which he organized a manhunt for the deceased, with the help of four other men. PW4 stated that the applicant instructed him to carry a bottle of petrol. They tracked the deceased to a nearby river known as Iruguu, at about 2.00 a.m. The applicant together with the four men begun raining blows on the



- deceased. They beat, stoned and cut him using pangas. The following day, the deceased's lifeless body was found. The body was partially burnt.
4. The appellant denied the series of events as narrated by the prosecution witnesses. It was his testimony that on the material night, he caught the deceased trying to steal chicken from his homestead, after which the deceased attacked him with a panga. He stated that he fled the scene, and that the deceased died due to beatings administered on him by 'mob justice'. After trial, the applicant was found guilty as charged, and sentenced to twenty (20) years imprisonment.
  5. The applicant, aggrieved by the said decision lodged an appeal before this Court. The applicant has lodged the instant notice of motion application under Article 51 of *the Constitution* and Section 124 of the Criminal Procedure Code, seeking that we release him on bail or bond of such reasonable terms, pending hearing and determination of his appeal, from the judgment of the trial court.
  6. The application, which is supported by an affidavit sworn by the applicant, is based on grounds set out on the face of the motion. The applicant avers that: his appeal has high chances of success; that the right to be released on bail is a constitutional right, which should not be denied in the absence of compelling reasons; that he is not a flight risk and has a permanent abode at his parents' home situated at Kaare Market, Tharaka Nithi County; that he was admitted to bond before the trial court and never absconded; he has a wife and three children; his health condition is deteriorating and that he requires proper medical attention; and, that he undertakes to faithfully abide by the terms and conditions set by this Court in the event his application is allowed.
  7. When the application came up for hearing before us, learned counsel for the applicant, Mr. Otieno, reiterated the averments contained on the face of the application. He averred that the applicant has since reformed, and is needed back home by his family, as he was their sole breadwinner. The application was opposed. Learned State Counsel, Ms. Njeru, was of the view that the applicant failed to demonstrate any exceptional circumstances warranting his release on bail pending appeal. She invited us to dismiss the application for lack of merit.
  8. We have carefully considered the application by the applicant, and the submissions made by the parties thereto.
  9. We are guided by our previous decisions on the discretion to release a convicted person on bail, pending hearing and determination of his or her appeal. In the case of *Somo vs Republic* [1972] E.A. 476 this Court observed thus:

“Where he (applicant) is undergoing a custodial sentence he must demonstrate, if he wishes to anticipate the result of his appeal and secure his release forthwith, that there are exceptional or unusual circumstances in the case. That is why when he relies on the ground that his appeal will prove successful, he must show that there is an overwhelming probability that it will succeed.”
  10. Further, in the case of *Daniel Dominic Karanja v Republic* [1986] eKLR, this Court expressed itself as follows on this issue:

“The most important issue here is if the appeal has such overwhelming chances of success that there is no justification for depriving the applicant of his liberty. The minor relevant considerations would be whether there are exceptional or unusual circumstances. The previous good character of the applicant and the hardship, if any, facing the wife and children of the applicant are not exceptional or unusual factors: see *Somo v Republic* [1972] E A 476. A solemn assertion by an applicant that he will not abscond if he is released is



not sufficient ground, even with support of sureties, for releasing a convicted person on bail pending appeal.”

11. In the present application, it was clear that the thrust of the applicant’s application for bail pending appeal is ill health and the fact that he is needed at home to support his family because he is their sole breadwinner. He also argued that he is not a flight risk based on his previous conduct before the trial court. The appellant did not persuade us that his intended appeal has an overwhelming probability of success that it would serve the interest of justice for him to be released on bail pending appeal. In any event other than filing the notice of appeal, we did not have sight of the grounds of appeal that would have given us an inkling of the likelihood of the success of his appeal.
12. We agree with the respondent that the applicant’s ill health does not constitute exceptional or unusual circumstances that would persuade this Court to release him on bail pending the hearing of his appeal. As has been stated by this Court time and time again, the prison is equipped with facilities to take care of the medical treatment of the inmates including the availability of a referral system to some of the best referral hospitals in the Republic should such a need arise. The fact that the appellant’s family had been deprived of a breadwinner, does not constitute exceptional circumstances that would convince this Court to exercise its jurisdiction in favour of the applicant. The applicant’s position as a convict means that he does not benefit from the presumption of innocence that those facing trial enjoy. That presumption ended with the appellant’s conviction.
13. The application, therefore, lacks merit and is hereby dismissed.

**DATED AND DELIVERED AT NYERI THIS 3<sup>RD</sup> DAY OCTOBER, 2025.**

**W. KARANJA**

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**JUDGE OF APPEAL**

**JAMILA MOHAMMED**

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**JUDGE OF APPEAL**

**L. KIMARU**

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**JUDGE OF APPEAL**

*I certify that this is a true copy of the original*

*Signed*

Deputy Registrar

