



REPUBLIC OF KENYA



**KENYA LAW**  
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**Odhiambo v Republic (Criminal Appeal E048 of 2025)  
[2025] KEHC 13778 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13778 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL APPEAL E048 OF 2025  
HI ONG'UDI, J  
OCTOBER 2, 2025**

**BETWEEN**

**VICTOR OTIENO ODHIAMBO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. This ruling is in respect of the Notice of Motion dated 5<sup>th</sup> September, 2025 where the applicant seeks admission on bond pending the hearing and determination of the present appeal. The application is supported by the grounds on its face plus the applicant's supporting affidavit.
2. The main ground is that the applicant was convicted of the offence of handling stolen property contrary to Section 322 of the *Penal Code* and sentenced to three (3) years imprisonment with no option of a fine. This was on 4<sup>th</sup> September, 2025. He is fearful that due to delays in preparing the record of appeal he may serve his entire sentence before the appeal is heard. He contends that his appeal has high chances of success.
3. Mr Ouma for the applicant relied on Court of Appeal (Nairobi) Criminal Application No. 18 of 1986 *Gibraj Shah v Republic* eKLR in arguing his application. He submitted that the applicant and others were charged with the offence of theft with an alternative count of handling stolen property. It is only the applicant who was convicted while others were acquitted. He contends that the appeal has high chances of success as the applicant was not found in possession. He relied on the case of *Josephat Mwangi Maina v Republic* Kerugoya HCRA No. 202 of 2012 eKLR.
4. He pointed out that the trial court relied on the circumstantial evidence of Samuel Rokori a former accused person who said there was a transportation fee of Ksh.8,000/= and the appellant explained how he dealt with scrap metals.



5. The Respondent filed a replying affidavit through M/s Emma Okok Principal prosecution counsel dated 16<sup>th</sup> September, 2025. Counsel averred that the applicant had just began serving sentence and there was nothing to complain about since she knew that appeals are being admitted quickly with nearby dates being given. So the issue of delay is out.

Further that the applicant had not raised any exceptional or unusual circumstances favouring grant of bail pending appeal.

6. Counsel further deponed that failure to breach bail/bond during trial was not a guarantee for him being released on bond pending appeal. That the applicant had not indicated a substantial point of law to be argued during the hearing of the appeal to warrant the grant of the prayers sought.

7. In his submissions Mr Wakasiaka prosecution counsel in opposing the application reiterated what was started in the replying affidavit. He argued that the appeal being arguable is not sufficient ground for grant of bond. He argued that the applicant is a flight risk.

Further that no exceptional or unusual circumstances had been raised by the applicant.

8. In a rejoinder Mr Ouma submitted that the issue of the appellant being a flight risk was not raised anywhere and the appellant had faithfully attended court on a cash bail of Ksh.30,000/=. He added that there are delays experienced in preparation of records of appeal, and in any event the respondent would not suffer any prejudice.

### **Analysis and Determination**

9. The applicant was convicted and sentenced to 3 years imprisonment on 4<sup>th</sup> September, 2025. He is fearful that he may serve his full sentence before the appeal is heard. The principles for release of one on bond pending appeal have been enumerated in a number of cases.

10. In *Jivraj Shah v Republic* (1986) KLR 605 the principles were set out to be;

- i. The principal 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.
- ii. 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 a substantial part of it will have been served by the time the appeal is heard, conditions for granting of bail.
- iii. 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 considerations of the particular circumstances and weight and relevance of the points to be agreed.

11. In *Dominic Karanja v Republic* [1986] KLR 612 the Court of Appeal stated that;

“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”

12. I have read through some of the annexed witness statements and the Judgment by the trial Magistrate Hon. D. Macharia. Summary of the evidence by the prosecution witnesses is not so detailed. I would need to read the full recorded evidence of these witnesses, which is not possible now since the handwritten proceedings are yet to be typed.



Secondly it would be important to know from the evidence the role played by PW2 (Samwel Lokori) Accused 1 – (Peter Kibet Makoji) & Accused 2 – (James Karanja Kariuki) in the entire incident. This can only be possible once the record of appeal is ready.

13. From the Judgment, the court indicated that the appellant was not placed at the scene of theft neither is he shown stealing the trailer. What linked him was an Mpesa transaction hence the conviction for handling stolen property. This will require further interrogation. At this point it will not be proper for the court to get into an analysis of these issues as that would be delving into the merits of the appeal.
14. A three (3) years sentence after remission comes to two (2) years. By the time the appeal is heard the applicant will definitely have served a good amount of the sentence.
15. In the interest of Justice, I find this to be a deserving case for release of the applicant on bond/bail pending appeal.

**Counsel Will Also Be Expected to Fast Track the Appeal.**

16. The above being the position I hereby grant the applicant bond of Ksh.150,000/= with a surety in similar sum. In the alternative he may be released on a cash bail of Ksh.50,000/= to appear.
17. Mention on 10/12/2025 before the Deputy Registrar to confirm the position on the Record of Appeal. The applicant must appear at every mention if released on bond.
18. Orders accordingly.

**DELIVERED VIRTUALLY, THIS 2<sup>ND</sup> DAY OF OCTOBER, 2025 IN OPEN COURT AT NAKURU.**

**H.I. ONG'UDI**

**JUDGE**

