Nyongesa v Chebor & 2 others (Criminal Appeal E051 of 2025)
[2025] KEHC 15457 (KLR) (31 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15457 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL APPEAL E051 OF 2025

JRA WANANDA, J

OCTOBER 31, 2025

BETWEEN

MURUTU IGANTIUS NYONGESA ..... APPELLANT

AND

WILLIAM CHEBOR ..... 1ST RESPONDENT

DAVID SILONGI ..... 2ND RESPONDENT

REPUBLIC ..... 3RD RESPONDENT

RULING

1. The Appellant was charged in Eldoret Chief Magistrate's Court Criminal Case No. E368 of 2020 with 4 counts of offences relating to personation of persons employed in the public service (Kenya National Examinations Council) contrary to Section 105(b) of the Penal Code, and of giving false information to a person employed in the public service contrary to Section 129(b) of the Penal Code, all in relation to matters concerned with supervision of the Grade 4 and Class 8 national examinations of 2020. He pleaded not guilty and the matter proceeded to full trial. By the Judgment delivered on 16/06/2025 by O. Mogire, SPM, the Appellant was found guilty and convicted on all the 4 counts, and sentenced to pay a fine of Kshs 100,000/- on each count, or in default, to serve 12 months imprisonment on each, and the same to run consecutively. Dissatisfied with the decision, the Appellant filed this appeal.

2. Together with the Appeal, the Appellant also filed the Application dated 14/07/2025 whereof he seeks orders as follows:

    i. [.....] spent.

    ii. That this Honourable Court be pleased to set aside, stay and/or vary orders and any subsequent order sentencing the Appellant in 4 counts to pay Kshs 100,000/= in each count and/or serve

12 months to run consecutively in each count pending the hearing and determination of this appeal.

iii. This Honourable Court be pleased to grant the Appellant bond pending the hearing and determination of this appeal.

iv. Costs of this appeal be in the cause.

3. The Appellant, in his Supporting Affidavit, deponed that he was arrested by the police, and the area Chief who beat him up before he was charged and subsequently convicted and sentenced. He faulted the trial Magistrate for relying on hearsay evidence, and for failing to call for handwriting expert evidence, and also contended that the sentence was harsh. He averred that the person who stood surety for him during the trial is still willing to stand in for him again. He deponed further that if granted bond he will attend Court as he did during the trial and he will abide by all the conditions that may be imposed.

4. In opposition to the Application, the 3rd Respondent (State), through Principal Prosecution Counsel Claire Muriithi, filed the Grounds of Opposition dated 11/09/2025. The same is premised as follows:

i. That the Application is an abuse of the Court process as the Appellant was properly convicted after the case against him was proved beyond reasonable doubt and therefore the principle of presumption of innocence does not apply.

ii. That the grounds of Appeal are based on merits of facts rather than points of law and therefore has no high chances of success.

iii. That the Appellant has not demonstrated any peculiar or exceptional circumstances to warrant him being released on bond pending the hearing of his Appeal.

iv. That the right to bail pending Appeal is not an absolute right under *the Constitution* of Kenya, 2010.

v. That there is no likelihood that the Appellant will have served a substantial part of the sentence before his Appeal is heard.

Determination

5. The issue that has been placed before the Court is "whether the Appellant should be granted bail/ bond pending appeal".

6. Before I delve in into the merits of the Application, I find it prudent to mention that the Applicant's prayer (2) in the Notice of Motion seeks substantive orders that cannot issue at this juncture. The same will have to wait final the hearing and determination of the Appeal.

7. Regarding the issue of bail, Article 49(1)(h) of *the Constitution* provides that:

An accused person has the right

.....

(h) to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released."

8. Section 357 of the Criminal Procedure Code then provides that:

> " After the entering of an appeal by the 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 the appeal."

9. This being an application for bail pending appeal, it differs from one of bail pending the hearing of a case. In the case of Masrani v R [1060] EA 321, that issue was analyzed as follows:

> " Different principles must apply after conviction. The accused person has then become a convicted person and the sentence starts to run from the date of his conviction."

10. On bail pending Appeal, the Court of Appeal in the case of Chimambhai v Republic (No 2) [1971] E.A. 343 remarked as follows:

> " The case of an appellant under sentence of imprisonment seeking bail lacks one of the strongest elements normally available to an accused person seeking bail before trial, namely, the presumption of innocence, but nevertheless the law of today frankly recognizes, to an extent at one-time unknown, the possibility of the conviction being erroneous or the punishment excessive, a recognition which is implicit in the legislation creating the right of appeal in criminal cases. ....."

11. The principles applicable when considering an Application for bail pending appeal have been discussed extensively by the Courts in various authorities. For instance, in the case of Jivraj Shah v Republic [1986] KLR 605, the Court laid out applicable the principles as follows:

> " 1. The principal contribution 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.
>
> 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.
>
> 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."

12. Further, the Court of Appeal in the case of Dominic Karanja v Republic [1986] KLR 612 stated as follows:

> " (a) The most important issue was that if the appeal had such overwhelming chances of success, there is no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances;

(b) The previous good character of the applicant and the hardships if any facing his family were not exceptional or unusual factors. Ill health per se would also not constitute an exceptional circumstance where there existed medical facilities for prisoners;

(c) A solemn assertion by an applicant that he will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal;

(d) ....."

13. I am alive to the fact that I should not at this stage, delve deeply into the merits of the Appeal as doing so may prejudice or pre-judge the Appeal. However, it is also true that to establish whether the Appeal demonstrates overwhelming chances of success, I will have to some extent analyze and dissect the grounds preferred for the Appeal. I will therefore try to examine the grounds without breaching this boundary, and by exercising utmost caution.

14. Regarding the conviction, the Appellant's grievance is that the trial Magistrate erred in relying on hearsay evidence and by failing to call for handwriting expert evidence, and also that he was "not put on his defence", whatever that means. Looking at the Judgment, I do not find the Appellant's assertions to be obvious. Those allegations are debatable, and are also ambiguous, and as such, cannot, at this stage, be termed as constituting overwhelming chances of success.

15. Regarding the allegation that the sentence was harsh or excessive, I also observe that Section 105(b) and Section 129(b) aforesaid, under which the Appellant was charged permitted the trial Court to impose imprisonment for up to 3 years. The fine of Kshs 100,000/- on each count, and in default, 12 months' imprisonment cannot therefore be outrightly termed as harsh or manifestly excessive. This ground, too, cannot therefore be deemed as disclosing overwhelming chance of success for the Appeal.

16. I also do not find any exceptional circumstances demonstrated by the Appellant that would justify grant of bail pending appeal.

Final Orders

17. The upshot of my findings above is that the Application for grant of bail pending Appeal fails and I order as follows:

    i. The Application dated 14/07/2025 is hereby dismissed.

    ii. The Deputy Registrar of this Court is directed to take steps to cause typing of the proceedings of the subordinate Court to be fast-tracked to facilitate the preparation of the Record of Appeal and subsequent admission of the Appeal for hearing and determination.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 31ST DAY OF OCTOBER 2025

.....

WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

Applicant (present physically in open Court)

Ms. Muriithi for the State

Court Assistant: Brian Kimathi