

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**CRIMINAL APPEAL NO. E043 OF 2025**

**JOHN ADONGO NYILIMA.....APPELLANT**

**VERSUS**

**REPUBLIC.....STATE**

*(Being original conviction and sentence in Criminal case No.E041 of 2022 at Kahawa Law Courts)*

**RULING**

1. Before this court for determination is the **Chamber Summons application** dated 15<sup>th</sup> April, 2025, in which the Appellant seeks the following orders:-
  - a) *Spent.*
  - b) *THAT this Honourable Court be pleased to admit the Applicant herein to bond/bail pending the hearing and determination of appeal herein.*
  - c) *THAT the Applicant be released from custody forthwith pending the hearing and determination of the appeal.*
  - d) *THAT the Honourable Court be pleased to make such further orders that may be just and for as is in the circumstances of this application.*

2. The Application is based on the grounds as set out on its face and the Affidavit in support of **John Adongo Nyilima** sworn on the even date. The Appellant stated that he was charged and convicted vide **Kahawa Criminal Case No E041 of 2022 for the offence of Dealing in Wildlife Trophy Contrary to Section 92 (2) of the Wildlife Conservation and Management Act, 2013** and on 3<sup>rd</sup> April, 2025, he was sentenced to serve four (4) years imprisonment and a fine of Kshs. 5,000,000/=. Being aggrieved with the conviction and sentence, the Appellant has lodged the appeal which he holds has overwhelming chances of success .
3. The Appellant also stated that during trial he was out on cash bail of Kshs. 200,000/= where he attended court diligently as had been directed by the trial court. He also told court that he suffers from a chronic disease being diabetes which he would be best managed at home. According to the Appellant, he has a wife and young children as well as parents who wholly depend on him and has urged the court to grant him bail pending the intended appeal which he undertakes to abide and obey the terms and conditions that the court will impose on him. He has prayed that the court allows the application.
4. The Respondent through its counsel, **M/S Ndeda** was not opposed to the

Applicant's application for bond pending Appeal, but sought for a Medical Report to confirm the Appellant's alleged ill-health and for a Pre-bail Information Report to be called for.

5. To determine the Appellant's application, I have read through and considered grounds upon which the same is premised, the oral submissions by either party alongside the case law and statutory provisions in respect of the said application. I have also perused the Record of Appeal proceedings.

#### **Analysis and Determination**

6. The Law on bail pending appeals is enshrined under **Section 357 of the Criminal Procedure Code** which states that: -

#### ***[357]. Admission to bail or suspension of sentence pending appeal***

***“(1) After the 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:***

***Provided that, where an application for bail is made to the***

*subordinate court and is refused by that court, no further application for bail shall lie to the High Court, but a person so refused bail by a subordinate court may appeal against refusal to the High Court and, notwithstanding anything to the contrary in sections 352 and 359, the appeal shall not be summarily rejected and shall be heard, in accordance with such procedure as may be prescribed, before one judge of the High Court sitting in Chambers.”*

7. It is trite that **Article 49(1)(h) of the Constitution** gives an accused person right to bail or bond. It 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. From these provision, it is clear that although an accused person has a right to be released on bail/bond pending trial, this right is no absolute as the same is limited if compelling reasons not to be released are shown. When a party/accused is convicted, the right becomes subject of a court’s discretion depending on the circumstances surrounding each case.
9. In the case of **Somo –vs- Republic [1972] EA 476**, the High Court held that the principles to be applied in granting bail pending appeal are as follows:-

- a) *Whether there are exceptional or unusual circumstances;*
- b) *That the Appellant is of good character, that the appeal has been admitted for hearing, that the offence did not involve personal violence are not exceptional or unusual circumstances.*
- c) *The most important ground is that the appeal has an overwhelming chance of being successful, in that case there is no justification for depriving the Applicant of his freedom.*

10. And in the case of Charles Owanga Aluoch –vs- Director of Public Prosecutions [2015] eKLR, where it was held that: -

*“The right to bail is provided under Article 49(1) of the Constitution but is at the discretion of the court, and is not absolute. Bail is a constitutional right where one is awaiting trial. After conviction that right is at the court’s discretion and upon considering the circumstances of the application. The courts have over the years formulated several principles and guidelines upon which bail pending appeal is anchored. In the case of Jiv Raji Shah vs. R [1966] KLR 605, the principle considerations for granting bail pending appeal were stated as follows:*

*“(1) 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.*

*(2) If it appears prima face 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.”*

11. In summary, the conditions outlined in the *Jiv Raji* case is that bail and bond pending appeal can only be granted where it is in interest of justice to grant the same, where the appeal has a high chance of success on account of substantial point of law or where there exist exceptional circumstances to warrant the exercise of this court's discretion.

12. In this case, in order to determine the Appellant's application, the court called for a Social inquiry to be conducted on the Appellant by the Probation and After Care Services Department and a report on sentence to

be filed. The report has stated that the Applicant is a husband and father to five children, which family describes him as a good person and have had no issues with him and have prayed for the court to have mercy on him and consider his release on bail pending appeal. It is also reported that the Appellant suffers from chronic illness as well as high blood pressure for which he has been receiving medication. It is further reported that the local administration and community stated that they know the Applicant well and that he did not have prior criminal records before his conviction herein and they are therefore not opposed to him being granted release on bail pending appeal. The Probation Officer recommended that given this health condition and employment status, the Appellant is suitable for release on bail pending appeal.

13. In his oral submissions to court, the Applicant/Appellant stated that he is remorseful and pleaded for court's mercy since he suffers from chronic diseases such as HIV, High Blood Pressure and other diseases which have caused his health to deteriorate while in prison that he has to always be in contact with the officer in charge of the clinic. He also stated that his 84 years old mother solely depends on him and so do his two school going children. According to the Appellant/Applicant he was a student at the

University of Nairobi before his arrest where he was doing a PHD in Public Policy and was in 2<sup>nd</sup> year. He also stated that he was a Lecturer at Mount Kenya University. He urged that he be considered for lenient bond terms to enable him return to work as he continues with rehabilitation as well as being with family. According to the Appellant/Applicant, he is willing to report to a nearby government or community agency if released on bond pending appeal.

14. On 29<sup>th</sup> September, 2025, the court called upon the Officer in Charge Medical Clinic facility of Kiambu G.K. prison to avail a medical report of Kiambu G.K. prison in respect of the Appellant to confirm his health status. The court has noted that the medical report was filed in court on 7<sup>th</sup> October, 2025 and a perusal thereof shows that the Appellant is HIV positive, is a hypertensive patient and has been on medication since 2015 and requires a follow-up. According to the said officer, he urged the court to consider the appeal by the Appellant/Applicant due to the medical conditions, congestion in prison, lack of proper nutrition, challenges in accessing quality health care, high costs of medication, pill burden and drug fatigue.

15. In this court's view, the Appellant's medical condition coupled with the

challenges in accessing quality health care, congestion in prison and poor nutrition qualify as exceptional circumstances to warrant its exercise of discretion and grant the said bail/bond terms.

16. For those reasons, the court proceeds to allow the Notice of Motion application dated 15<sup>th</sup> April, 2025 on the following terms:-

***a) The Appellant/Applicant be and is hereby released on a bond of Kshs.200,000/= with one surety of a similar amount.***

***b) In the alternative, the Applicant may be released on a cash bail of Kshs.100,000/=.***

***c) The Appellants particulars alongside his personal particulars to include his place of abode and pending the hearing of the appeal.***

***d) The Appellant to attend court as and whenever he will be required during the pendency of the application.***

***e) Failure to comply with order (d), the bail terms will cease to apply and Appellant will be remanded in custody until***

*matter is finalised.*

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU**

**THIS 11<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**D. O. CHEPKWONY**

**JUDGE**

**In the presence of:**

**Appellant in person – present**

**M/S Mnyati counsel for the Respondent**

**Court Assistant – Martin/Sakina**