



REPUBLIC OF KENYA



KENYA LAW
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**Kaguru v Republic (Criminal Appeal E027 of 2025)
[2025] KEHC 17770 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17770 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CRIMINAL APPEAL E027 OF 2025
CM KARIUKI, J
NOVEMBER 28, 2025**

BETWEEN

TIMONTHY KAMOMOE KAGURU APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an Appeal against conviction and sentence by Hon.H.M. Nyaberi in
Criminal Case No. 956 of 2018 at the Chief Magistrate's Court at Narok)*

RULING

1. The Applicant, together with another, was charged with the offence of conspiracy to commit a Felony, contrary to section 393 of the Penal Code, and, alternatively, with handling stolen property.
2. Further, the Applicant faced charges of Fraudulent use of documents contrary to Section 114 (1) of the *Traffic Act*, Cap 403, Laws of Kenya. He was also charged with an offence of alteration of Licence contrary to Section 40 of the NTSA Act and 956 of 2018.
3. The Applicant was acquitted of the offence of conspiracy to commit a felony, but convicted of the other counts and sentenced to a total of 5 years' imprisonment.
4. This has provoked the instant Appeal and bail pending appeal Application dated 16/9/2025. His application is based on the apprehension that ,the time required to hear the Appeal and the nature of the sentence; if successful, will render the Appeal nugatory. That he has medical conditions which may jeopardize his health if he continues to remain in prison, and finally, the Appeal has very high chances of success.
5. On the prosecution's case, the Appeal is opposed, and so is the application, because there are no exceptional circumstances that can justify the grant of bail pending Appeal. The Appeal has no chances of success. The Appellant was convicted rightly based on the evidence tendered. No overwhelming



- chances of Appeal are demonstrated with an overwhelming possibility of success. The diagnosis of acute pancreatitis is not a justification for the grant of bail pending Appeal.
6. After reviewing the application and the parties' cases, the court affirms that the decision aligns with established legal principles, fostering confidence in the process.
 7. It is a trite law that the principles of grant bond/bail are that: the main grounds for granting bail pending an appeal are the existence of exceptional or unusual circumstances, the strong likelihood of the appeal succeeding on a substantial point of law, and the risk of the applicant serving a substantial part of the sentence before the appeal is heard. Courts consider these factors, but the discretion ultimately rests with the judge, who must be convinced that releasing the convicted person is in the interest of justice.
 8. In the case of *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."
 9. The applicant herein being a convict is serving a lawful sentence, therefore, does not benefit from the presumption of innocence and inherent right to bail pending trial. This fact was well captured in the case of *Mutua v R* [1988] KLR 497, where the Court of Appeal stated that: "It must be remembered that an applicant for bail has been convicted by a properly constituted court and is undergoing punishment because of that conviction which stands until it is set aside on appeal."
 10. It is therefore upon the applicant to demonstrate existence of circumstances that result into the appeal being successful that call for the court's intervention so as not to be rendered nugatory. This fact has been captured in the Bail & Bond Policy Guidelines where it is provided that: "... the burden is on the convicted person to demonstrate that there is an overwhelming chance of success."
 11. . The mere question of the applicant believing that the appeal has a high chance of success, should not be a ground to allow the application. In the case of *Charles Ratemo Matumo v Republic* [2021] eKLR, the court held that: "The mere fact that the applicant believes that his appeal has chances of success does not necessarily amount to exceptional circumstances since appellants are only expected to lodge an appeal where they believed that their appeals have chances of success. It requires more than such belief to satisfy the court that there are exceptional circumstances.
 12. On the possibility of seeking an Appeal heard, the Applicant ought to know that this court gives priority to criminal appeals lodged within a month or so for hearing dates. The court will always prioritize the matter/appeal for hearing, demonstrating its commitment to a timely and fair resolution, which should reassure all parties. In the instant matter, the applicant has not discharged the burden of proving the factors aforesaid to warrant grant of bail pending appeal.
 13. Thus, court makes the orders that;
 - i. The application is dismissed.
 - ii. The appeal to be heard on priority basis.

DATED AND DELIVERED AT NAROK VIA MICROSOFT TEAMS THIS 28TH DAY OF NOVEMBER, 2025

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CHARLES KARIUKI
JUDGE

