



**PMM v Republic (Criminal Appeal E039 of 2024)  
[2026] KEHC 313 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 313 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL APPEAL E039 OF 2024  
TM MATHEKA, J  
JANUARY 23, 2026**

**BETWEEN**

**PMM ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Introduction**

1. The Application for determination is dated 27/09/2024 and was accompanied by a certificate of urgency dated 08/01/2026. It is brought under the High Court Vacation Rules and Article 159 of the Constitution. It seeks the following orders;
  - a. Spent.
  - b. That this honorable court be pleased to review and vary its ruling on the Applicant's/ Appellant's Application on pending appeal and the Appellant/Applicant be admitted to bail/ bond pending the hearing and determination of his appeal.
2. The Application is supported by the grounds on its face and the Affidavit of the Appellant sworn on the same day. He deponed that he filed an application for bail pending appeal dated 14/06/2024 sometime on 17/06/2024. That, some crucial information was not brought to the attention of the court in the said Application.
3. He deponed that his wife, suffered a miscarriage recently and underwent a medical surgery for fibroids and is therefore incapacitated to carry out family chores for their children. It is deponed that a copy of her discharge summary is annexed as PMM1.
4. He deponed that he has two sons of which the first son joined university in the month of August 2024 while his second son is in form three and has not been able to report back to school because of



- school fees. That he was actually sent back home from school as there as there was no money at all for reporting.
5. He deponed that he is not able to access his savings while in prison as he is the sole signatory. That, he was escorted by prison officers to the bank in Wote but could not access funds as his branch is in Nairobi and was advised that he has to visit his branch physically in order to access funds.
  6. He deponed that his health is deteriorating and is in need of specialized treatment which he can only access while out of prison on bail. Medical records are exhibited as PMM2.
  7. He deponed that before his arrest, he was working as the Parent Seed Inspector at Agri Seed Co. Ltd and his responsibility was to contract small and medium farmers who would help him in handling and maintaining the company's high value parental germplasms as per the Seed and Plant Varieties Act. That, the farmers/growers require his guidance and technical support during the period the seeds are under irrigation to avoid contamination in order to supply high quality seeds to the company for good price.
  8. He deponed that most of the farmers/growers have been visiting him in prison for technical advice but they are denied access due to prison restrictions hence granting him bail pending appeal would have enabled him to assist them in view of their heavy investment whose estimated income is approximately kshs 25,000,000/=.
  9. He urged the court to consider the prevailing circumstances of his family, health and farmers and review its ruling delivered on 15/08/2025. That, he will abide by the terms and conditions imposed.
  10. In his further supporting affidavit sworn on 12/01/2026, he deponed that he has compelling new issues for the court to consider. That, one of his sons has been admitted to join [Particulars Withheld] High School Nairobi for grade 10 as per the admission letter exhibited as PMM1. That, he has a bank account which requires his personal presence for any money withdrawal and the ATM card is exhibited as PMM2. That, his wife underwent an operation and is therefore incapable of taking care of the family.
  11. He deponed that he did not hand over at the company where he worked hence granting him bail will enable him to personally attend to all the issues that require his personal presence.
  12. The State did not file a formal response owing to short notice but it made oral submissions in opposition of the Application.
  13. The Application was canvassed orally in addition to the Applicant's written submissions dated 27/09/2024.

### **The Applicant's Submissions**

14. In the written submissions filed by Muia V.M & Co. Advocates, it was submitted that after delivery of ruling on the Application for bail pending appeal, the Appellant addressed the court and raised new issues that were not raised in his supporting affidavit. That, the court then advised him to move the court formally incorporating the new issues he had raised verbally in court hence prompting the filing of the present application for review. Reliance was placed on Somo -vs- Republic [1972] EA476 where the court enumerated the principles to be applied while considering an application for bail pending Appeal as follows;
  - i. Whether there are exceptional or Unusual Circumstances.
  - ii. 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.



- iii. The most important ground is that, if the Appeal has overwhelming chances of being successful, there is no justification for depriving the Applicant of his freedom.
15. It was submitted that the evidence on record clearly shows that the Appeal has high chances of success and reliance was placed on the case of Daniel Dominic Karanja -vs- Republic (1986) eKLR where the Court of appeal stated;
- “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.”
16. It was submitted that bail pending appeal is a Constitutional right enshrined in Article 49(1) (h) of the Constitution of Kenya which provides that an accused person has the right to be released on bond or bail on reasonable condition pending a charge or trial, unless there are compelling reasons not to be released. That, the right is however not absolute and is normally at the discretion of the court.
17. It was submitted that over the years, courts have gone beyond the two main principles and considered other unusual circumstances like in the present case. Reliance was placed on Samuel Macharia Njagi -vs- Republic (2013) eKLR where the court stated;
- “The principles for admission to bail pending appeal in Kenya have for over 40 years been clustered around the decision in Somo VS Republic (1972) E.A 476. According to this case the applicant must demonstrates the existence of overwhelming chances of success....”
- The principles laid down in Somo’s case are no doubt still sound in law, however it cannot possibly be said to be the last and final testament on the principles governing the consideration of an application for bail pending appeal. Law as we all know is an evolving discipline. New circumstances and issues emerge which may call for different breed and sets of considerations.”
18. In his oral submissions, Mr. Muia for the Applicant reiterated the grounds in the Applicant’s affidavits and submitted that the exceptional circumstances necessitating review of the bail ruling are that; firstly, the Applicants wife is incapacitated by a recent medical surgery and is therefore not able to take care of the family. Secondly, he submitted that the Applicant’s son who was recently admitted to [Particulars Withheld] High School is in need of school fees and the admission period is between 14<sup>th</sup> and 16<sup>th</sup> January 2026. That, the Applicant has some savings in the bank but his physical presence is required for any withdrawals to be made.

### **Submissions by the State**

19. The Application was opposed orally by Mr. Timothy Musyoki for the state where he submitted that the Appellant is a convicted felon who no longer enjoys the presumption of innocence and as such, he should continue serving his jail term. Secondly, Mr. Musyoki submitted that the Appellant has not demonstrated any exceptional circumstance to warrant grant of bail. That, the issue of going to the bank personally is not an exceptional circumstance and numerous courts have held that sickness does not amount to an exceptional circumstance. Thirdly, he submitted that the Appellant has not demonstrated that the Appeal has overwhelming chances of success and has not stated the sentence that is being served by the Appellant. That, matters concerning wildlife trophies attract tough penalties hence making the Appellant a flight risk.



20. In rejoinder, Mr. Muia submitted that the Application before court is for review and the major consideration is demonstration of exceptional circumstance. He submitted that in the earlier Application for bail pending appeal, it was demonstrated that the appeal has high chances of success and the sentence of seven and five years consecutively was also indicated.
21. He submitted that the Appellant is not a flight risk as he was on bail during the trial and he attended court faithfully despite the seriousness of the offences.
22. Having looked at the Application, Response, exhibited documents and rival submissions, the only issue for determination is whether the ruling of this court's delivered on 27/08/2024 should be reviewed.

### **Analysis & Determination**

23. The Application before court is for review of this court's ruling which denied bail pending appeal to the Appellant. Seeking review of the ruling basically means that the Appellant wants to be admitted to bail pending appeal and that he has new ground for the same.
24. In its ruling delivered on 27/08/2024, this court found that the question of whether the appeal has high chances of success could only be established after the appeal is argued. The deposition by counsel was found to be insufficient to establish that question.
25. As to whether there were exceptional circumstances to warrant the exercise of the court's discretion, this court found that the Applicant had not availed any exceptional circumstances and also found that he will not have served his sentence by the time the Appeal is heard and determined.
26. Through the Application for review, this court has now been called upon to determine whether the circumstances presented by the Applicant are exceptional enough to warrant exercise of discretion in his favor.
27. The Applicant deponed that a hospital discharge summary for his wife was annexed as PMM1 but the same was not attached to his supporting affidavit. He deponed that due to the medical condition of his wife, she is incapacitated and unable to attend to family obligations. He deponed that his son has been admitted to [Particulars Withheld] High School and is expected to report to school between 12<sup>th</sup> and 16<sup>th</sup> January 2026. The admission letter marked PMM1 shows the students name as MMM and the reporting dates to be between 12<sup>th</sup> and 16<sup>th</sup> January 2026. The Applicant has also exhibited a Visa card to show that he is a bank account holder and his deposition is that he cannot access his savings unless he goes to the bank physically.
28. The medical condition of the Applicant's wife has not been established and the requirement of going to Applicant's bank in Nairobi instead of the branch in Wote town cannot be verified by this court. Further, this court cannot verify that the child who has been admitted to [Particulars Withheld] High School is the Applicant's son because in his initial Application for bail, he deponed that he has only two sons; one who joined university in August 2024 and another one who was in form three in 2024.
29. I have anxiously considered the application and the parameters set out in precedent as to what amounts to exceptional circumstances for the grant of bail pending appeal. In this case the applicant presents the scenario that he must be present in person for money to be with drawn from his own bank account, and that the branch at Wote could not serve as he was required to attend to the bank's Headquarters in Nairobi.



30. The applicant has not produced in court evidence to support the alleged fact of his wife's debilitating surgery ; neither has any evidence been produced to support the allegation that the local branch of his bank cannot serve him and he must obtain services from the Headquarters.
31. It is the appellant alleging the exceptional circumstance. It is he who must prove the same., especially now that he is a convict serving a 12 year imprisonment sentence, the threshold for bail pending appeal is higher and any fact pleaded must be established. In this application he has placed before court a document indication that a person by the name MM is to join [Particulars Withheld] High School but nothing to demonstrate that that indeed is his child for whom he has parental responsibility.
32. In addition, there are no other supporting documents /evidence to support the other averments.
33. In my view the application has not met the requisite threshold for an application of this nature and it is declined.

**DATED, SIGNED AND DELIVERED VIA CTS THIS 23<sup>RD</sup> JANUARY 2026**

**MUMBUA T MATHEKA**

**JUDGE**

Applicant's Advocates

Muia V.M & Co. Advocates

