

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
HIGH COURT NO E049 OF 2025

REPUBLIC-----
APPELLANT

VERSUS

PAUL MUTAMBO -----1ST
RESPONDENT

AMOS OMINA----- 2ND
RESPONDENT

BOAZ ONGAYI----- 3RD
RESPONDENT

RULING

1. The applicants filed a notice of motion application seeking the following orders;
 - a) THAT this application be certified as urgent and the same be heard ex parte in the first instance in respect of prayer 2 above
 - b) THAT this Honourable court be pleased to grant an order of stay of proceedings and execution of the warrant of arrest issued on 27/10/2025 against the Respondents pending hearing and determination of the Respondents/ Applicants herein and thereafter pending the hearing of the Appeal before the Court of Appeal.
 - c) THAT this honourable court be pleased to grant an order of stay of sentencing and or further proceedings in Kakamega MC Criminal Case No. E 1485 of 2025 pending hearing and

determination of this application, and thereafter pending the hearing of the Appeal before the Court of Appeal.

d) The costs of this application are provided for.

2. The Application is premised on the grounds set out on its face and on the supporting affidavit sworn on 3rd November 2025 by the 1st applicant on behalf of the other applicants, who state that they had been charged jointly at Butali Criminal case No. E1485 of 2024 with the offence of robbery with violence and had been acquitted at the trial court; however, the acquittal was overturned at the High court vide a judgment delivered on 14/10/2025 and a warrant of arrest issued by the Chief Magistrate at Kakamega for sentencing.
3. They aver that they have filed notice of appeal with a notice of appeal with the court of appeal, which they claim has a high chance of success.
4. They are currently for the stay of execution of the warrants as well as the proceedings in Kakamega Criminal Case No E1458 of 2025, claiming that their arrest and sentencing before the appeal would render the appeal nugatory.
5. They claim that they filed the appeal without undue delay and in the interest of justice, and further that the respondent would not be prejudiced if the stay is granted.
6. The application was canvassed by way of written submissions.

Appellant's submissions.

7. On whether this court has the jurisdiction to grant a stay of execution pending the appeal, the applicant argued section 356 (1) of the Criminal Procedure Code, stating that the court has the power to preserve the status quo to prevent an abuse of its process.
8. On whether they have demonstrated that they have an arguable appeal, they aver that their appeal raises issues on a substantive point of law with a high chance of success and quoted section 179 of the CPC, quoting the court of appeal case in **SKW VS. REPUBLIC (2025) KECA 326 (KLR)**. They claim that they had presented the claim of an alibi, which was supported by tangible evidence such as a clinical officer's report. They further claimed that the court failed to evaluate the defence evidence and relied on the prosecution's case, dismissing their case.
9. They claim that the appeal will be rendered nugatory if the appeal is not allowed, depriving them of their liberty.
10. They pray that this court allows their application in the interest of justice.

Analysis and determination

11. I have carefully considered the Notice of Motion dated 3rd November 2025, the supporting affidavit, the written submissions on record, and the applicable law. The main issue for determination is whether this court should grant stay of execution of warrants of arrest, stay of sentencing, and stay of further proceedings pending an intended appeal to the Court of Appeal.

12. section 356(1) of the Criminal Procedure Code, grants the High Court discretionary power to order a stay of execution pending appeal. However, it is now settled law that such discretion must be exercised judicially and sparingly, and only where sufficient cause has been demonstrated.
13. The principles guiding the grant of stay in criminal proceedings are well settled. in **Daniel Dominic Karanja v Republic [1986] KLR 462**, *the Court of Appeal* emphasized that previous good character or family hardships are not exceptional factors. In **Magara v Republic [2025] KEHC 11480 (KLR)**, the High Court denied bail where medical conditions were treatable in prison and no life-threatening risks were proven, holding that exceptional circumstances must be substantiated beyond mere averments.
14. The applicants argue that they have an arguable appeal with high chances of success, particularly on the alleged failure by the High Court to evaluate their defence and alibi evidence. However, a mere assertion that an appeal is arguable does not suffice. The court must be satisfied, even at a prima facie level, that the appeal raises substantial points of law likely to result in success.
15. Applying these principles, the Applicants' claims of an unevaluated alibi and misapplication of Section 179 CPC do not disclose a substantial point of law with overwhelming chances of success. The High Court's judgment (delivered on 14/10/2025)

meticulously analyzed the prosecution evidence against the defence, finding the alibi unsupported and contradicted.

16. The cited case of **SKW v Republic (2025) KECA 326 (KLR)** does not advance the applicants' case. Each application for stay must be considered on its own peculiar facts. The applicants have not demonstrated that the circumstances of their case fall within the narrow exception contemplated in that decision.
17. On the argument that the appeal would be rendered nugatory if stay is not granted, this court is guided by the holding in **Jivraj Shah v Republic [1986] eKLR**, where it was held that the possibility of serving a sentence before an appeal is heard does not, by itself, render an appeal nugatory.
18. Further, this court cannot ignore the fact that the applicants were lawfully convicted by the High Court, which overturned their acquittal. Upon conviction, the trial court is obligated to proceed to sentencing. Granting stay in such circumstances would amount to suspending the enforcement of a valid judgment, without sufficient legal justification.
19. It is also notable that the applicants seek a stay pending an appeal to the Court of Appeal. Jurisdictionally, once a judgment of the High Court has been rendered, the appropriate forum for stay pending appeal to the Court of Appeal lies principally with that court, unless exceptional circumstances are demonstrated. No such circumstances have been shown herein.

20. *In **Republic v Danson Mgunya & Another [2010] eKLR***, the High Court cautioned against using stay applications to delay or obstruct the course of criminal justice.
21. Balancing the competing interests of the applicants' right to appeal and the public interest in the enforcement of criminal law, this court is not persuaded that the scales tilt in favour of granting the orders sought.
22. In light of the foregoing analysis, I find that the applicants have failed to meet the legal threshold for the grant of orders of stay of execution, stay of sentencing, or stay of further proceedings.
23. Consequently, the Notice of Motion dated 3rd November 2025 is devoid of merit and is hereby dismissed in its entirety.
24. The interim orders, if any, are hereby vacated.
25. Orders accordingly.
26. Right of Appeal 14 days.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA
30TH DAY OF JANUARY, 2026.**

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

Mr Sirtui for the ODPP present.

Mr. Kariuki for the Applicant absent though aware of the ruling date.

Applicants also absent though aware of the ruling date.