



REPUBLIC OF KENYA



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**Gachunu v Republic (Criminal Appeal E102 of 2025)
[2026] KEHC 1133 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1133 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL APPEAL E102 OF 2025
CW GITHUA, J
FEBRUARY 5, 2026**

BETWEEN

NANCY WANGUI GACHUNU APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was tried and convicted in four counts with the offence of obtaining by false pretences contrary to Section 313 of the Penal Code and in four other counts with the offence of obtaining registration by false pretences contrary to Section 320 of the Penal Code.
2. Upon conviction, she was sentenced to pay a fine of Kshs.1,000,000 in counts 1, 3, 5 and 7 in which she was convicted of the offence of obtaining by false pretences in default to serve one year imprisonment in each count. In counts 2,4,6, and 8 which related to her conviction for the offence of obtaining registration by false pretences, she was fined Kshs.200,000 in each count in default to serve one year imprisonment.

In addition, the terms of imprisonment imposed in default of payment of fine in each count were ordered to run consecutively.
3. Being aggrieved by her conviction and sentence, the applicant proffered the instant appeal. She has now approached this court through a Notice of Motion dated 23rd October 2025 seeking that she be admitted to bond pending hearing and determination of her appeal.
4. In the grounds anchoring the application and in the depositions made in her supporting affidavit, the applicant urged this court to find that her appeal raised serious legal and evidential issues and had high chances of success; that the appeal was likely to take a long time before it was heard and determined and she risked serving her entire sentence before the appeal was concluded.



5. . Further, the applicant averred that she was not a flight risk as she was out on bond during her trial and she did not abscond. She also invited the court to note that she was an elderly lady aged 65 years who was suffering from osteoarthritis which required urgent and consistent medical attention which was not adequately accessible in prison; that her continued incarceration will severely compromise her deteriorating health condition and may result in irreparable harm.
6. Though served with the application, the respondent chose not to file a formal response but opposed it during the hearing by way of oral submissions on points of law.
7. In her submissions in support of the application, learned counsel for the applicant Mrs Ngugi reiterated the depositions made in the applicant's supporting affidavit and emphasized that the application ought to be allowed since the applicant's appeal had high chances of success and secondly, there were exceptional circumstances justifying admission of the applicant to bond pending appeal being her advanced age, ill health and the fact that she was likely to complete serving her sentence before the appeal was heard yet she had been wrongly convicted. Counsel also argued that the sentence meted out by the trial court was harsh and excessive.
8. In her rejoinder, learned prosecution counsel Ms. Muriu opposed the application arguing that bond pending appeal was not granted as a matter of right but was dependent on the court's discretion taking into account the circumstances of each case. Counsel denied the applicant's claim that her appeal had high chances of success and urged the court to find that the sentence imposed on the applicant was lawful and was not excessive as claimed by the applicant.
9. I have carefully considered the application, the supporting affidavit and the rival oral submissions made on behalf of the parties in support and in opposition thereof.

As correctly submitted by learned counsel for both parties, admission to bond pending appeal is not granted automatically as a matter of right. A reading of Section 357 of the Criminal Procedure Code (CPC) leaves no doubt that the decision on whether or not to admit an appellant to bond pending appeal is discretionary but needless to say, that discretion must be exercised judiciously taking into account the facts and circumstances of each case.

10. . The principles governing the exercise of the court's discretion in applications of this nature are well settled. To be deserving of the exercise of the court's discretion in his favour, the applicant must satisfy two conditions, namely;
 - (i) That his or her appeal has overwhelming chances of success and;
 - (ii) That there were unusual or exceptional circumstances in his or her case to warrant the order sought.
11. The above principles have been discussed in many authorities which I need not reproduce here but one such authority is the case of *Jivraj Shah V Republic* 1986 KLR 605 in which the Court of Appeal expressed itself as follows;

“.....the principle consideration is if there exist exceptional or unusual circumstances upon which this court can fairly conclude that it is in the interest of justice to grant bail. 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 urged , and that the sentence or a substantial part of it, will have been served by the time the appeal is heard, conditions for granting bail will exist...”



12. From the foregoing, it is obvious that the principles governing an application for bond pending appeal are very different from those applicable in an application for bond or bail pending trial. In the latter application, the applicant's guilt was yet to be proved and so the applicant still enjoyed the presumption of innocence. He had a right to bail unless the prosecution established compelling reasons why that right should be denied.
13. In an application for bond pending appeal however, the applicant is already a convict and no longer enjoyed the presumption of innocence. The presumption of the law at that stage was that the applicant was properly convicted by a court of competent jurisdiction. This presumption is the basis for the requirement that in an application for bond pending appeal, the applicant must demonstrate that his or her appeal had overwhelming chances of success or that there were special circumstances that justified admission to bond pending conclusion of the appeal.
14. . In this case, I have perused the record of appeal. I note that the applicant filed her appeal vide a memorandum of appeal dated 23rd October 2025 which is contrary to the procedure provided by the law for the filing of criminal appeals. Section 350 of the Criminal Procedure Code specifically directs that an appeal to the High Court challenging a conviction made by a subordinate court should be filed by way of a Petition of Appeal. A memorandum of appeal is the pleading used to institute civil appeals and is not applicable to criminal appeals.
15. . Be that as it may, given the dictates of Article 159 (2) of *the Constitution* which directs courts to administer justice without undue regard to procedural technicalities, I will disregard the above procedural lapse and deem the appeal as properly filed.
16. . That said, I have carefully considered the application and the rival oral submissions made on behalf of both parties. I have also considered the grounds of appeal as well as the record of the trial court and the applicable law.

The applicant has urged this court to find that she deserves grant of the order sought because, inter alia, her appeal has overwhelming chances of success. I have read the evidence on record and the judgement of the trial court. All I can say for now at this stage is that prima facie, the applicant has a good and arguable appeal which may or may not succeed. This is not the same thing as saying that the appeal has overwhelming chances of success.

17. It was also argued on behalf of the applicant that since she was out on bond during the trial and she did not abscond, she was not a flight risk and this put her in good stead to be considered for bond pending appeal. She also claimed that she was a grandmother who was taking care of her grandchildren. Although this may well be the case, it is trite that this is not a good reason for grant of bail pending trial.
18. In buttressing this point, the Court of Appeal in *Daniel Dominic Karanja V Republic* [1986] eKLR, stated as follows;

“The previous good character of the applicant and the hardship, if any, facing the wife and children of the applicant are not exceptional or unusual factors: see *Somo v Republic* [1972] E A 476. A solemn assertion by an applicant that he will not abscond if he is released is not sufficient ground, even with support of sureties, for releasing a convicted person on bail pending appeal....”

I need not say more.

19. . The foregoing notwithstanding, I have considered the applicant's age which was stated to be in the range of 65 to 70 years. Though no evidence was produced to prove the applicant's alleged age, the



same was not disputed by the respondent. The applicant also complained that she was suffering from osteoarthritis, a degenerative joint disease which was not being well managed in prison. I saw the applicant during the hearing and I confirm that she was indeed an elderly lady who appeared rather frail.

20. . Considering the court's heavy workload and the congestion in the court diary with regard to much older appeals, I find that it is unlikely that this appeal will be reached for hearing before the applicant had served a substantial part of her default sentence.
21. Taking all relevant factors into account including the applicant's advanced age, I find that it would be in the interest of justice to allow this application. I therefore exercise my discretion and admit the applicant to bond pending appeal on the following terms;
- (i) The applicant will be released upon executing a personal bond of Kshs.1,000,00 together with one surety of a similar amount.
 - (ii) Upon her release, she will attend the court on all dates fixed for either hearing or mention of the appeal.
 - (iii) In default of compliance with any of the above conditions, the bond granted will be cancelled.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 5TH DAY OF FEBRUARY 2026.

HON. C. W. GITHUA

JUDGE

In the presence of;

The applicant

Mr.Wanyoro holding brief for Mrs Ngugi for the applicant

No Appearance for the respondent

Ms. Susan Waiganjo, Court Assistant

