



**Kooria v Republic (Criminal Appeal E051 of 2025)  
[2026] KEHC 1239 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1239 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CRIMINAL APPEAL E051 OF 2025  
FN MUCHEMI, J  
FEBRUARY 5, 2026**

**BETWEEN**

**NAHASHON MUCHIRI KOORIA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Brief Facts**

1. The application for determination is dated 12<sup>th</sup> November 2025 seeking for orders for release of the applicant on bail pending the hearing and determination of the appeal.
2. The applicant states that he was charged in Criminal Case No. E1783 of 2025 in Ruiru Senior Principal Magistrate Court with the offences of grievous harm contrary to Section 234 of the Penal Code and threatening to kill contrary to Section 223(1) of the Penal Code. The applicant pleaded guilty to the charge of grievous harm and was sentenced to five years imprisonment. Being aggrieved with the conviction and sentence, the applicant states that he lodged a petition of appeal on 10<sup>th</sup> November 2025.
3. The applicant argues that his appeal has overwhelming chances of success as the grounds of appeal raise serious questions of law and fact that go to the root of the conviction and sentence. The applicant further states that he is likely to serve his sentence without just cause.
4. The applicant further states that he is a qualified clinical officer with strong community ties including a family that depends on him. Further, the applicant avers that he is not a flight risk and neither will he harm the complainant or the public.
5. The applicant undertakes to abide by any conditions that this Honourable Court may impose for the grant of bail including regular reporting to the Deputy Registrar or surrender of travel documents. The



applicant further argues that appeal is likely to take a considerable period to be heard and determined during which he will continue to suffer irreparable harm and prejudice by remaining in custody, potentially rendering the appeal nugatory should it succeed as he may serve a significant portion of the sentence before determination.

6. The respondent filed a Replying Affidavit on 8<sup>th</sup> December 2025 to the effect that the intended appeal has no chances of success due to the overwhelming evidence against the appellant. The appellant was convicted on his own plea of guilty and was sentenced to five years imprisonment. Furthermore, the respondent argues that the applicant has to discharge the burden of proof that the appeal has high chances of success as unlike bail pending trial, bail pending appeal is not a constitutional right. There is a presumption that the applicant was lawfully convicted unless the contrary is proved.
7. Furthermore, the respondent states that the applicant has not provided any material to support his averment that he shall serve a substantial part of the sentence awaiting hearing of the appeal nor has he demonstrated any exceptional circumstances to warrant the court's discretion to grant bail pending appeal.
8. The respondent argues that currently the law and practice favour quick determination of matters without unreasonable delay and thus the applicant is unlikely to serve a substantial part of the sentence before the appeal is heard and determined.
9. The respondent states that the solemn assertion by the applicant that he is the sole breadwinner is not a sufficient ground for releasing a convicted person on bail pending appeal. Thus, the respondent states that the applicant has failed to satisfy the extreme high standard for bail pending appeal.
10. Parties put in written submissions.

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

11. The applicant submits that his plea was not unequivocal as in his mitigation he introduced matters that negated the plea of guilty and raised a plausible defence. In the circumstances and since he was unrepresented, the learned magistrate ought to have entered a plea of not guilty. To support his contentions, he relies on the case of John Muendo Musau vs Republic [2013] eKLR.
12. The applicant refers to the case of Adan vs Republic [1973] EA 445 and submits that the trial court failed to record separate pleas for each count and further the sentencing dose not identify the count to which the five year term relates. Thus such uncertainty renders the conviction and sentence unsafe and legally defective.
13. The applicant argues that he is not a flight risk, he has a fixed abode, is a known medical professional and has demonstrated full cooperation with the authorities. He further argues that the alleged conduct arose from a domestic interpersonal conflict with the complainant who have been in a romantic relationship. The applicant refers to Section 176 of the Criminal Procedure Code and submits that this was a case where reconciliation was not only possible but contemplated under the law but the trial court failed to consider that avenue. Further the record shows that the complainant was not eager to report the incident and only did so under the pressure from her father. Thus, they would have resolved the dispute amicably. The applicant further submits that the complainant is out of danger and there is no updated medical report from the prosecution to suggest otherwise. By continuing to hold him in custody is not necessary for the complainant's welfare.
14. The applicant submits that he is a medical practitioner and his prolonged incarceration deprives his patients and community of essential medical services. The applicant further submits that there are no aggravating circumstances on record that would justify further pre-appeal custody.



15. The applicant argues that he has served more than one month of the sentence imposed and there exists a real risk that he will serve a substantial portion of the sentence that may be ultimately set aside resulting in irreparable injustice. The applicant further argues that appeals take considerable time to be heard and determined, particularly in light of the heavy caseload in the High Court. Even with the court's best efforts, prompt determination is not always possible.

### **The Respondent's Submissions.**

16. The respondent relies on Section 357(1) of the Criminal Procedure Code and the case of Jivraj Shah vs Republic [1986] eKLR and submits that the applicant has not met the required threshold for an application for bail pending appeal. Further, the respondent relies on the case of Somo vs Republic [1972] EA 476 and submits that the appeal does not have overwhelming chances of success as the evidence shows that the applicant was properly convicted. The respondent further submits that the applicant has failed to demonstrate that he shall serve a substantial part of the sentence if the appeal is likely to succeed.
17. The respondent relies on the case of R vs Kanji [1946] 22 KLR and submits that the applicant has not demonstrated any unusual or exceptional circumstances to warrant the grant of bond pending appeal.
18. Relying on the case of Chimambhai vs Republic [1971] EA 343, the respondent contends that currently, the law and practice favour quick dispensation of matters without an unreasonable delay. The respondent argues that the applicant failed to discharge the burden of proof that he is likely to serve a substantial part of the sentence before the appeal is heard which in turn could be successful hence leading to prejudice.

### **The Law**

#### **Whether the applicant has met the threshold for granting bail pending appeal.**

19. Section 357(1) of the Criminal Procedure Code provides for the granting of bail pending appeal, it states that:-

After 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.

20. The principles for granting bond pending appeal were reiterated in the case of Jivraj Shah vs Republic [1986] KLR 605 which laid down the principles as follows:-
  - a. 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.
  - b. 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 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.
  - c. 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 all owed and the proper approach is the consideration of the particular circumstances and weight and relevance of the points to be argued.

21. It is trite law that in considering an application for bail pending appeal, the court has discretion in the matter which must be exercised judicially taking into consideration the following factors:-

**A) Does the appeal have overwhelming chances of success?**

22. The applicant argues that the appeal has a high probability of success as his plea was unequivocal.
23. I have carefully perused and examined the trial court proceedings and judgment. As well as the grounds of appeal. Without pre-empting the appeal I am of the view that the said grounds do not disclose the existence of an appeal with overwhelming chances of success. This does not mean that the appeal is not arguable. The appellant will still have his day in court to argue his appeal and the outcome could still favour him depending on many other factors that may be presented for consideration.

**B) Is there a possibility of delay in hearing and determining the Appeal?**

24. The applicant was sentenced on 3<sup>rd</sup> November 2025 to serve five (5) years imprisonment. It is therefore highly unlikely that he shall have served a substantial part of the sentence before the appeal is heard. The court diary is accommodative of dates for hearing of appeals and this court is hopeful that that is likely to benefit from service weeks in the course of this year. As such, I am of the view that the applicant is not likely to serve a substantial part of his sentence before the appeal is heard and determined.

**C) Demonstration of exceptional or unusual circumstances**

25. In *Dominic Karanja vs Republic* [1986] KLR 612 the Court of Appeal held:-
- a. The most important issue was that if the appeal had such overwhelming chances of success, there is no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances;
  - b. The previous good character of the applicant and the hardships if any facing his family were not exceptional or unusual factors. Ill health per se would also not constitute exceptional circumstances where there existed medical facilities for prisoners;
  - c. A solemn assertion by an applicant that he will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal;
26. Similarly in *Peter Hinga Ngotho vs Republic* [2015]eKLR it was held that the fact that the applicant did not breach the bail conditions in the court below, is not an exceptional circumstance which can warrant a decision to admit an applicant to bail pending appeal.
27. In the instant case, the applicant argued that he is a clinical professional with strong community ties including a family that depends on him. However, this position cannot be held to be an exceptional or unusual circumstance.
28. Relying on the above cited cases, it is my considered view that the applicant has not demonstrated any unusual or exceptional circumstances to warrant the grant of bond pending appeal. The fact that the applicant is the sole breadwinner of his family does not constitute any unusual or exceptional circumstances.
29. In conclusion, I find that this application is not successful and it is hereby dismissed.
30. It is hereby so ordered.



**RULING DFELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 5<sup>TH</sup> DAY OF  
FEBRUARY 2026.**

**F. MUCHEMI**

**JUDGE**

