

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CRIMINAL APPEAL NO. EO57 OF 2025**

**SAMMY IKIROI MACHARIA .....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Application before me is the Notice of Motion dated 1<sup>st</sup> November, 2025 expressed under Article 25 (c), 50 and 159 of the Constitution of Kenya 2010 and Section 347 and 357 of the Criminal Procedure Code Cap 75 Laws of Kenya seeking the following orders; -

**1) *Spent.***

**2) *Spent.***

**3) *Spent.***

**4) *That the Honourable Court be pleased to stay execution of the sentence passed against the Applicant on 30/11/2025 and further grant the Applicant bail and/or bond pending hearing and determination of this Appeal.***

2. The application is based on the grounds set out on its face and is supported by the Affidavit of sworn by Sammy Ikiroi Macharia (the Applicant) on even date. He states that he was convicted by the trial court in Nakuru MCCR No. E 4245 of 2021 and sentenced to two (2) years imprisonment for the offence of handling stolen property despite not being found in possession of any property belonging to the complainant Kenya Railways Corporation.

3. He states that no evidence was adduced during trial that the Applicant was found in possession of the property alleged to have been stolen. Consequently, he states that he was put in prison to serve a sentence for an offence whose ingredients were never proved against him. He maintained that there exist exceptional circumstances to warrant towards grant of bail/bond pending appeal.
4. He deposes that if the Application is not allowed, he will serve the sentence hence suffer for an offence he did not commit and therefore, he will suffer substantial loss and harm that cannot be compensated by an award of damages. He therefore committed himself to abide by any reasonable conditions that this Court would impose.
5. In response, the Respondent filed a Replying Affidavit sworn by James Kihara on 21<sup>st</sup> November 2025. He deposed that it would be premature for the Applicant to state that his appeal has high chances of success before the same is heard and determined on merit and therefore, stay of the sentence cannot be granted at this stage.
6. However, he stated that he had no objection to the Applicant being granted bond terms but the Respondent proposed two sureties to be sufficient to allow the Applicant attend court.

### **Determination**

7. This Court has considered the application, affidavit in support and the response by the Respondent herein.
8. The principle considerations for granting bail pending appeal were stated in the case of *JivRaji Shah v R [1966] KLR 605* thus:

***“(1) The principle 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 in the interest of justice to grant bail.*

*(2) 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.*

*(3) 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 allowed and the proper approach is the consideration of the particular circumstances and weight and relevance of the points to be argued.”*

9. In this case, it is noted that the application as regards bond is not opposed. The Respondent only urges that the Applicant be released on bond with two sureties to ensure that the Applicant attends court for the said Appeal.
10. There is nothing to show why the Respondent specifically seeks two sureties to ensure the Applicant's attendance.
11. This Court has noted the copy of the trial court's judgment and the petition of appeal. The appeal should be heard on merit for determination by this court and therefore, the sentence cannot be suspended.
12. In those circumstances, the application dated 1/11/2025 makes the following orders: -

**1. The Applicant be and is granted a bond of Kshs. 300,000/- with one surety of similar amount pending hearing and determination of the appeal.**

2. **The Applicant to proceed to prepare the Record of Appeal within 30 days of this Ruling.**
3. **The lower court file and the Record of Appeal be availed for admission by this Court.**
4. **This matter be placed before the Deputy Registrar to ensure compliance on 2/4/2026.**

**Dated, signed and delivered at Nakuru this 26<sup>th</sup> Day of February 2026.**

**PATRICIA GICHOHI**

**JUDGE**

**In the presence of:**

**Mr. Ogutu for the Appellant/ Applicant**

**Ms Anyumba for the Respondent**

**Sammy Ekiroi Macharia -Appellant /Applicant**

**Erickson , Court Assistant**