



REPUBLIC OF KENYA



**Achoki v Republic (Criminal Appeal E044 of 2025)
[2026] KEHC 2729 (KLR) (12 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2729 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL APPEAL E044 OF 2025
TW CHERERE, J
FEBRUARY 12, 2026**

BETWEEN

WILLIAM THOMAS ACHOKI APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was convicted in Nyamira CMCRC E648 of 2024 for the offences of unauthorised installation of electrical apparatus contrary to section 168(1) of the *Energy Act*, 2019 and fraudulent consumption of electrical energy contrary to section 168(1) of the *Energy Act*, 2019. He was sentenced to serve one year imprisonment on each count, the sentences to run concurrently, or to pay a fine of KES. 1,000,000 on each count.
2. Being aggrieved by both conviction and sentence, the Applicant lodged a Petition of Appeal dated 09th December 2025. He now seeks to be admitted to bail pending appeal pursuant to section 357(1) of the Criminal Procedure Code as set out in the Notice of Motion dated 16th December 2025⁷
3. The application is premised on section 357(1) of the Criminal Procedure Code and Articles 49 and 50 of *the Constitution*. Section 357(1) provides that after the entering of an appeal, the High Court may order that the appellant be released on bail with or without sureties or that execution of the sentence be suspended pending the hearing of the appeal. The power conferred is discretionary.
4. The Applicant contends that his appeal has overwhelming chances of success, that he is not a flight risk, that he attended trial faithfully while on bond, that he is unwell and requires medical attention, and that he may serve a substantial part of the sentence before the appeal is heard and determined.
5. The Respondent opposes the application and submits that no exceptional or unusual circumstances have been demonstrated. It is further submitted that no medical evidence has been placed before the Court to substantiate the alleged illness and that, in any event, illness per se does not constitute



- an exceptional circumstance. The Respondent also points out that the Applicant has served approximately two months of a one-year concurrent custodial sentence and is therefore unlikely to serve a substantial portion of the sentence before the appeal is heard.
6. It is therefore clear that after conviction, the presumption of innocence no longer operates in favour of an applicant. The burden shifts to the applicant to demonstrate overwhelming chances of success or the existence of exceptional or unusual circumstances warranting release.
 7. Turning to the authorities cited by the Applicant, namely *Michael Juma Oyamo & Another v Republic* [2019] eKLR, *Patius Gichobi Njagi & 2 Others v Republic* [2013] eKLR, *Republic v Joseph Kuria Irungu alias Jowie* [2019] eKLR, *Republic v DKN* [2021] eKLR and *Republic v Danford Kabage Mwangi* [2016] eKLR it is apparent that they relate to bail pending trial under Article 49(1) (h) of *the Constitution* where the accused retains the presumption of innocence and the State bears the burden of demonstrating compelling reasons to curtail liberty.
 8. The present application is for bail pending appeal under section 357(1) of the Criminal Procedure Code. The Applicant has already been convicted, and the applicable test is that set out in *Jivraj Shah v Republic* [1986] KLR 605 and *Dominic Karanja v Republic* [1986] KLR 612, which require demonstration of overwhelming chances of success or exceptional or unusual circumstances. The authorities cited by the Applicant, which relate to bail before conviction, are therefore distinguishable and inapplicable.
 9. I have considered the Petition of Appeal and the judgment of the trial court annexed to the application. At this interlocutory stage, I can only say that the Appeal may or may not succeed.
 10. On the issue of illness, no medical evidence has been produced to substantiate the alleged condition or to show that it cannot be managed within the prison medical system. Ill health, without proof that adequate treatment is unavailable in custody, does not constitute an exceptional circumstance.
 11. With regard to the sentence, the Applicant is serving a one-year custodial term on each count running concurrently. He has served approximately two months. It cannot be said that he is likely to serve a substantial portion of the sentence before the appeal is heard and determined.
 12. From the foregoing, I find that the Applicant has failed to demonstrate overwhelming chances of success or exceptional or unusual circumstances to justify release pending appeal.
 13. The Notice of Motion dated 16th December 2025 is considered and found to have no merit and it is hereby dismissed.
 14. This appeal will be mentioned before the Deputy Registrar on 16th April 2026 to confirm filing and service of record of appeal and submissions on the appeal.

DELIVERED AT NYAMIRA THIS 12TH DAY OF FEBRUARY 2026

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Anita

Appellant/Applicant - Present

For Appellant/Applicant - Ms. Nyachiro for Nyachiro Nyagaka & Co. Advocates

For Respondent - Mr. Chirchir (SADPP)

