



REPUBLIC OF KENYA



**Gitau v Republic (Criminal Appeal E082 of 2025)
[2026] KEHC 2378 (KLR) (23 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2378 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E082 OF 2025
HM NYAGA, J
FEBRUARY 23, 2026**

BETWEEN

JOSEPH MURITHI GITAU APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The appellant has moved the court through an application dated 5th December 2025, in which he seeks that he be granted bond/bail pending the hearing and determination of the appeal.
2. The gist of the application is that he was charged with the offence of malicious damage to property contrary to section 339(1) of the *Penal Code*. That he was convicted and sentenced to forty (40) months imprisonment without the option of a fine. That he has preferred an appeal against both the conviction and sentence. That his appeal has high chances of success. That he is sickly and aged and that, given that the appeal may take time to be determined, he seeks to be released on bond. That during the trial, he abided by all the terms set by the court and he is ready to do so once released.
3. The prosecution counsel sought time to respond to the application but at the time of writing this ruling, no such response had been received.
4. The appellant through his advocate submitted that the appeal has high chances of success and given the short sentence imposed, the applicant may have served a large portion of the same by the time that the appeal is heard and determined. That the appellant poses no danger of absconding. Cited in support of the submission was *Chimambhai vs Republic* (1971) EA 343.
5. There is no doubt that this court has powers to grant a convicted person bond or bail pending the determination of his/her appeal.



6. Bond or bail pending Appeal is provided for under Section 357 of the [Criminal Procedure Code](#) (CPC). It provides;

“ 357. Admission to bail or suspension of sentence pending appeal

- (1) After the 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: Provided that, where an application for bail is made to the subordinate court and is refused by that court, no further application for bail shall lie to the High Court, but a person so refused bail by a subordinate court may appeal against refusal to the High Court and, notwithstanding anything to the contrary in sections 352 and 359, the appeal shall not be summarily rejected and shall be heard, in accordance with such procedure as may be prescribed, before one judge of the High Court sitting in chambers.
- (2) If the appeal is ultimately dismissed and the original sentence confirmed, or some other sentence of imprisonment substituted therefor, the time during which the appellant has been released on bail or during which the sentence has been suspended shall be excluded in computing the term of imprisonment to which he is finally sentenced.
- (3) The Chief Justice may make rules of court to regulate the procedure in cases under this section.”

7. The principles for consideration for the grant of bond/bail pending appeal were set out in [Ademba vs Republic](#) 1983 eKLR where the Court of Appeal held that;

“.....bail pending appeal may only be granted if there are exceptional or unusual circumstances. The likelihood of success in the Appeal is a factor taken into consideration in granting bail pending appeal is a factor taken into consideration in granting bail pending appeal..”

8. Also, in [Dominic Karanja vs Republic](#) (1986) eKLR, it was held that;

- (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 an exceptional circumstance 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.”

10. Lastly, in the case of *Jivraj Shah vs Republic* [1986] eKLR the court also reiterated the principles to be applied in determination whether to grant or deny bail pending Appeal. It was held that;
- a. The existence of exceptional or unusual circumstances upon which the court can fairly conclude that it is just to grant bail.
 - b. If it appears prima facie from the totality of the circumstances that the appeal is likely to be successful an account of some substantial point of law to be urged.
 - c. The sentence or a substantial part of it will have been served by the time the appeal is heard.
9. Applying the principles set out above, I have considered the matter.
10. The appellant’s appeal largely relies on the averment that he was erroneously convicted and that the sentence was harsh and excessive. Although he claimed to be sickly, no proof was submitted to the court for consideration.
11. As accused who has been convicted by court of competent jurisdiction ceases to be presumed innocent, it is upon him to show that there are exceptional circumstances that warrant a grant of the orders sought.
12. I note that the appellant was convicted to a total of 40 months. Taking account of remission, the sentence is relatively short and he may serve a substantial part of it by the time the appeal is heard and determined even if appeals are now expedited. I also take account of the sentence and the circumstances behind the offence.
13. Having examined the factors to be considered, I find that justice is best served if the appellant is granted bond as he awaits to argue his appeal.
14. Therefore, the following orders shall issue:
- a. The appellant is granted a bond of Kshs.100,000/= with a surety of similar amount or a cash bail of Kshs.50,000/=.
 - b. The appeal is admitted.
 - c. The appellant to file and serve the record of appeal within 30 days.
 - d. The lower court record to be forwarded to this court.
 - e. A mention date for compliance to be given after delivery of this ruling.

DATED, SIGNED & DELIVERED AT MERU THIS 23RD DAY OF FEBRUARY, 2026.

H. M. NYAGA

JUDGE

