



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ISIOLO

HIGH COURT CRIMINAL APPEAL NO. E 13 OF 2025

**JACKSON NJIRU KIVINDU1ST
APPELLANT/APPLICANT**

**MICHAEL KIURA NDIGA2ND
APPELLANT/APPLICANT**

VERSUS

**REPUBLIC
.....RESPONDENT**

RULING

1. The Appellants herein seek to be released on bail, pending appeal. The Application is supported by the Affidavit of the 1st Applicant sworn on 25/07/25.
2. The Applicants state that they were convicted by the trial Court and sentenced to a fine of Ksh. 10,000,000 plus 10 years imprisonment, and an additional 4 years in default of the fine; that they are likely to serve sentence before their appeal is heard; that their appeal has overwhelming chances of success. They have further stated that they were out on bond during trial, and are committed to abiding by any bond terms that the Court may set.
3. The 1st Applicant filed a supplementary affidavit sworn on 6/10/2026, in which he states that he

stands the risk of termination of his job unless he is released on bail.

4. The Respondents filed grounds of opposition on 04/09/2025 in objection to the Application.
5. The Respondent states that the legal threshold for granting bail pending Appeal has not been met; That bail pending Appeal is discretionary, as the Applicants innocence has since been compromised; That they have not demonstrated that there are peculiar or exceptional circumstances warranting bail.
6. It is further stated there is no probability of the sentence of 10 years being served before the Appeal is determined and that the Appeal has no chances of succeeding.
7. Finally, the Respondent is apprehensive that due to the high fine and long sentence imposed, the Applicants chances of absconding are high.
8. The Application proceeded by way of Submissions. I have considered the said submissions and will be taken into consideration in the determination.

Determination

9. **Section 357 of the criminal procedure code (CPC)** provides for admission of a person already convicted to bail pending Appeal. However, bail under section 357 of CPC, unlike bail pending trial set out under Article 49(1 (h), may be granted at the discretion of the trial or the Appellate Court. It is not a right.
10. Further it is trite Law that the Applicant seeking bail must meet certain conditions . In the case of ***Jivraj Shah v Republic [1986] KECA 36 (KLR)*** the court of Appeal set out the criteria as follows:

“1.The principal contribution 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.

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.

11. I have looked at the Affidavit and Submissions of the Applicants. In their Submissions, they have submitted that they are likely to serve term before their appeal is heard. I find this submission farfetched and devoid of sincerity. The Applicants were sentenced to 10 years, plus an additional 4, if they fail to pay the fine of Ksh. 10,000,000. This Court would not have any reason, to have an appeal pending, even for half of that period.
12. Further the fact that they attended court faithfully during trial is not a factor for consideration. The risk of job loss is equally not a factor.

13. The Applicants have failed to demonstrate that they are *exceptional* or unusual circumstances to warrant bail.

14. The Application has no merit and it is hereby dismissed.

Dated, Signed and delivered at Isiolo, this 26th day of February, 2026

S. Chirchir
Judge

In the presence of:-

Ismail Abdow -Court Assistant.
Jackson Njiru- Applicant
Michael Ndiga-Applicant
Mr .majale - for the Respondent.