



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
(CHERERE-J)
HCCRA E042 OF 2025

BETWEEN
HELLEN MORAA OMWERA APPELLANT/APPLICANT
AND
REPUBLIC RESPONDENT

RULING

1. The Appellant/Applicant moved this Court by a Chamber Summons dated 15th December 2025 seeking release on bail or bond pending the hearing and determination of her appeal against conviction and sentence in Nyamira MCCR E948 of 2024.
2. The application is brought under section 356(1) and section 357 of the Criminal Procedure Code, Article 49(1)(h) of the Constitution, and all other enabling provisions of the law. It is supported by an affidavit sworn by Immaculate Cheserem, Advocate for the Appellant/Applicant, together with written submissions filed on behalf of the Appellant/Applicant. The Respondent, though served, did not file a response.
3. In her submissions, the Appellant/Applicant contended that the appeal raises arguable grounds with high chances of success, that she complied with bond terms during trial, that she is not a flight risk, and that there is a likelihood that she may serve a substantial portion of the sentence before the appeal is heard and determined.

4. The Court has considered the application, the supporting affidavit, and the submissions placed before it. The issue for determination is whether the Appellant/Applicant has met the legal threshold for the grant of bail or bond pending appeal.
5. Section 356(1) of the Criminal Procedure Code empowers the Court, upon the filing of an appeal, to suspend execution of a sentence pending the hearing and determination of the appeal, but it does not provide for release on bail or bond.
6. The substantive statutory basis for bail pending appeal is section 357 of the Criminal Procedure Code, which vests in the Court a discretionary power to admit an appellant to bail or to suspend execution of sentence pending appeal.
7. Although Article 49(1)(h) of the Constitution guarantees the right to bail pending charge or trial, that right does not extend to a person who has been convicted and sentenced by a court of competent jurisdiction, bail pending appeal being a statutory and discretionary remedy.
8. In urging the Court to exercise its discretion, the Appellant/Applicant relied on **Jivraj Shah v Republic [1986] KLR 605** as setting out the general principles applicable to applications for bail pending appeal.
9. At this interlocutory stage, the Court is not required to determine the appeal on its merits. The inquiry is whether, on a prima facie assessment, the appeal discloses overwhelming chances of success or whether exceptional or unusual circumstances have been demonstrated.

10. Regarding the chances of success of the Appellant/Applicant's appeal, all that I can properly be stated at this stage is that it may or may not succeed, which position cannot be equated to a finding that the appeal has overwhelming chances of success.
11. The Appellant/Applicant was sentenced to twenty-five (25) years' imprisonment, and having regard to the fact that this Court is already hearing criminal appeals filed in the year 2025, it is unlikely that the Appellant/Applicant will serve a substantial part of the sentence before the appeal is heard and determined.
12. The fact that the Appellant/Applicant was on bond during trial and complied with bond terms, while relevant, constitutes an ordinary circumstance attendant to many criminal trials and does not amount to an exceptional or unusual circumstance warranting release pending appeal.
13. The Court is further guided by the decision of the Court of Appeal in **Khatoro v Republic [2026] KECA 168 (KLR)**, where it was reiterated that considerations such as family hardship, first-offender status, fixed abode, reconciliation with the victim's family, or assurances of non-absconding are ordinary considerations which do not justify the grant of bail pending appeal.
14. Applying the foregoing principles to the present application, and notwithstanding the absence of a response by the Respondent, the Court is not satisfied that the Appellant/Applicant has demonstrated overwhelming chances of success of the appeal or the existence of exceptional or unusual circumstances warranting the exercise of discretion in her favour.

15. Consequently, the application dated 15th December 2025 is hereby dismissed.

16. 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 - Mr. Bwononga for Bwononga & Co. Advocates

For the DPP - Mr. Chirchir (SADPP)