



**Afula v Republic (Criminal Appeal E072 of 2025)
[2026] KEHC 4675 (KLR) (10 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4675 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL APPEAL E072 OF 2025
WM MUSYOKA, J
APRIL 10, 2026**

BETWEEN

BENSON AFULA APPELLANT

AND

REPUBLIC RESPONDENT

*(Appeal from judgement of Hon. Ann Njeru, Senior Resident Magistrate,
SRM, in Port Victoria MCCRC No. E297 of 2024, of 29th October 2025)*

RULING

1. The application, that I am called upon to determine, is the Motion, dated 2nd December 2025. It seeks admission to bond/bail, pending appeal.
2. The record of appeal has not been filed, and the original trial court records have not been availed. The only papers that the appellant has filed are the petition of appeal and the instant application. There is nothing to show the matter that was before the court, and what it was about. There is also nothing to show that a judgement was delivered on 29th October 2025, and what its terms were.
3. I can only exercise discretion to grant the orders sought, if there is before me some material from the trial court, to show that there was a matter before the trial court, where some orders were granted, which could provide basis for the appeal herein, in respect of which I can admit the appellant to bond. A copy of the judgment, at the very least, should have been exhibited. It is available in the CTS. The court ought not act blindly.
4. At this level, bond/bail is not automatic. It is not a constitutional right. The right to presumption of innocence is not available, for the appellant has been convicted and is serving sentence. Justification has to be provided, and a case made out, for grant of bond/bail pending appeal, in the circumstances.



5. Consequently, I am unable to consider the application for admission to bond pending appeal, for I have no material before me, which should provide basis for consideration of the application. The Motion for bond/bail pending appeal is declined, disallowed and dismissed. Let the Deputy Registrar call for the original trial court records, and, thereafter fix the matter for directions before the Judge.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 10TH DAY OF APRIL 2026.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Oduor, instructed by Ngeri Omiti & Bush, Advocates for the appellant.

Mr. Mumo, instructed by the Director of Public Prosecutions, for the respondent.

