

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT CHUKA**

**HCCRA NO. E007 OF 2025**

**MARTIN MWIRIGI**

**KIRIMI.....APPELLANT**

**-VERSUS-**

**REPUBLIC .....RESPONDE  
NT**

**RULING**

1. This ruling is in respect of an application dated 25<sup>th</sup> September 2025 filed by Martin Mwirigi Kirimi (Applicant) seeking to be granted bail pending appeal.
2. The Application is brought on grounds reproduced verbatim that:-
  - (a) The Applicant being dissatisfied with the judgement and sentence lodged an appeal

against the conviction and sentence of the Hon. Joyce Gandani- CM.

- (b) The Applicant was diagnosed with a medical condition which requires him to have constant and stable medical attention.
- (c) That the Applicant had instructed the previous advocate to file this application but the same has never been filed.
- (d) That the Applicant/Appellant had been granted bail/bond terms during the lower court trial and he adhered to the terms without fail.
- (e) That the Applicant/Appellant is willing to adhere to all the conditions which shall be set by this Honourable Court in regard to the bail bond terms.
- (f) The Applicant has a medical condition that may jeopardize him if he continues to remain in prison.

(g) That the Applicant/Appellant's appeal has high chances of success.

(h) That it is in the interest of justice that this application be allowed.

(i) That the Respondent shall not suffer any prejudice if the Application is allowed.

3. The Applicant states in his supporting affidavit that he had already filed an appeal against his conviction and sentence and which appeal had high chances of success. That he has been diagnosed with a medical condition which required management by a specialist and that such management was not readily available in prison.

4. The Applicant stated that he was out on bond during his trial and that he attended his trial faithfully without fail and would equally attend his appeal.

5. The Applicant attached his medical records including medical report [MM II], X-Rays and scans [MM, 1 III] to support his application.
6. The Application was served upon the Respondent. At the time of hearing of the Application on 19<sup>th</sup> February, 2026, the Respondent had not filed a response. Prosecution Counsel submitted that the Respondent was not opposed to the Application and only urged the court to grant adequate conditions.
7. The only issue for my determination is whether or not the Applicant should be granted bail pending appeal.
8. The Applicant has come under Article 49(i) (h) of the Constitution and section 357 of the Criminal Procedure Code (CPC.)

Article 49(1) of the Constitution provides:-

**“49(i) An arrested person has the right -**

**(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”**

9. Section 357 of the Criminal Procedure Code provides:-

**“357. (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 therefore, 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)-**

**Analysis and determination**

10. The Applicant has already been convicted and therefore lost the presumption of innocence. On appeal, he can only demonstrate exceptional circumstances as to why he should be granted bail pending appeal. In **Paul Wainaina Boiyo alias Sheki Nairobi Criminal Case No. 8 of 2024 [2014] eKLR** the Court stated:-

***“An application for bail pending appeal is predicated firstly on the constitutional right to liberty; secondly, on a demonstration of exceptional circumstances and thirdly, it is an exercise of judicial discretion taking into consideration the circumstances of the case.....”***

11. The Applicant's case is that he was ailing in prison and his heart condition required close management by specialist. I have looked at the medical records annexed to the Application. I am satisfied that the Applicant has demonstrated exceptional circumstances.
12. The power to grant or refuse bail at any stage of proceedings is discretionary. Such discretion, however be exercised judicially taking into consideration the circumstances of each case.
13. In this case I am persuaded to exercise discretion in favour of the Applicant. The Applicant is granted a cash bail of fifty thousand shillings (Ksh.50,000/-.) In addition, he shall provide one surety of a similar amount. The Applicant shall attend court whenever required and shall not impede the hearing of his appeal in any way.

Orders accordingly.

**Ruling delivered, dated and signed at Chuka  
this 29<sup>th</sup> day of April, 2026.**

.....

**R. LAGAT-KORIR**

**JUDGE**

**Ruling delivered in the presence of the Applicant,  
Ms Musyimi for the Applicant and Miss Rukunga  
for the Respondent; Muriuki (Court Assistant).**