**Ngatia v Director of Public Prosecutions (Criminal Appeal E010 of 2026) [2026] KEHC 5548 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5548 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KERUGOYA**

**CRIMINAL APPEAL E010 OF 2026**

**EM MURIITHI, J**

**APRIL 30, 2026**

**BETWEEN**

**DAVID NGATIA ..... APPELLANT**

**AND**

**DPP ..... RESPONDENT**

**RULING**

1. The principles for consideration in an application for bail pending appeal are well settled. This Court considered the same in Boke Chacha v Republic [2013] KEHC 5818 (KLR), as follows:

> "4. According to authorities on bail pending appeal, bearing in mind that the applicant has now been convicted by a competent court and is on punishment for the conviction which stands until it is set aside on appeal, the criteria for consideration is:
>
> a. Whether there exists exception or unusual circumstances which justify grant of bail in interests of justice. See Jivraj Shah v. R (1986) KLR 605.
>
> b. Such exceptional circumstances exist where the appeal has overwhelming chances of success or where a set of circumstances exist which disclose substantial merit in the appeal and that the sentence or a substantial part of it will have been served by the time the appeal is heard. See Jivraj Shah supra; Mutua v. R (1988) KLR 497; and Somo v. R (1972) E.A 476.
>
> c. The previous good character of the applicant and the hardships facing his family, and his ill health, where there existed prison

medical facilities for prisoners, are not exceptional or unusual circumstances. See Dominic Karanja v. R (1986) KLR 612.

d. A solemn assertion, even if supported by sureties, that the applicant will not abscond if released is not sufficient ground for releasing a convicted person on bail pending appeal. See Dominic Karanja, supra."

2. The accused rely on the shortness of the sentence to urge that he may serve a substantial portionof the sentence before the appeal is heard and determined and urge that the appeal is arguable and raises substantial issues as to the nature of the civil contractual nature of the dispute and whether the offence of obtaining by false pretences was proved to the required standard. By Submissions dated 24/4/2026, the applicant submitted on the principles for the grant in similar terms as above, as follows:

"7. It is settled law that after conviction, release pending appeal is discretionary and must be exercised judiciously upon established principles.

8. In the celebrated decision of Dominic Karanja v Republic {1986[ KLR 612, the Court of Appeal held that the most important issue is whether the appeal has overwhelming chances of success, and if not, whether there exist exceptional or unusual circumstances warranting release. The Court further emphasized that a major consideration is whether the sentence or a substantial part thereof will have been served before the appeal is heard.

9. More recently, in Andika & 5 Others v Republic (Criminal Appeal E247, E255, E264, E267 & E273 of 2024) [2025[ KECA 1205 (KLR) (4 July 2025) ( the Court of Appeal) reaffirmed the continuing jurisdiction of appellate courts to grant release pending appeal where justice so demands, and admitted the applicants to bond pending the hearing of their appeals.

10. The clear thread running through the authorities is that the Court should consider:

a) Whether the appeal is arguable and not frivolous;

b) Whether the sentence is short such that a substantial portion may be served before the appeal is heard;

c) Whether the circumstances justify preserving the efficacy of the appeal process; and

d) Whether the interests of justice favour release on appropriate terms."

3. The DPP did not, as at 29/4/2026, despite adjournment for that purpose, file any response to the applicant on bond pending appeal. By directions dated 16/4/2026, the Court in view of the urgency of an application for bail pending appeal, directed that:

"Court:

1. Ruling is reserved for 30/4/2026.

2. DPP to file Replying Affidavit together with submissions within seven (7) days.

3. Replying Submissions to be filed within 3 days of service."

4. The Court does not find that there is an exceptional circumstance by way of an overwhelming chances of success of the appeal but there is merit in the submission that on account of the shortness of sentence and the likelihood of substantial service of the sentence before appeal is heard and determined. With remission under section 46 of the *Prisons Act*, the appellant is entitled to be released from prison after nine months from the date of sentence on 30/3/2026 when he will have served full sentence of imprisonment for 1 year. He has today already served one month of the nine leaving a balance of only 8 months. On the diary of the Court and taking into account the need to prepare the Record of Appeal from Wang'uru Law Courts, it may well take the next ninety (90) days before the appeal is heard and determined.

5. Should that happen, the appellant will have served almost half of his custody time of nine months, remission accounted. In the premises, the Court considers an exceptional circumstance exists in the short period of the sentence as would result in the appellant being compelled to serve a substantial portion thereof before the appeal is considered and determined.

6. The one exceptional circumstance suffices and the court need not consider that the other grounds, including the presence of overwhelming chances of success of the appeal, are doubtful. The Court will, therefore, grant bail pending hearing and determination of the appeal.

7. However, the applicant is now a convicted person, his presumption of innocence extinguished and the terms of bail must reflect that fact and the greater risk of absconding to avoid serving the already determined sentence if the appeal is unsuccessful, and the bail terms should aim to secure his attendance to serve his sentence.

**Order**

8. Accordingly, for the reasons set out above the court finds merit in the application on account of the short period of the sentence on one (1) year, a substantial portion of which the applicant may consequently serve before hearing and determination.

9. The accused will be released on a bond of Ksh.500,000/= with one surety of the same amount.

10. Record of Appeal to be prepared and Mention for Directions as to hearing of the Appeal is set for 20/7/2026.

Order accordingly.

**DATED AND DELIVERED THIS 30TH DAY OF APRIL 2026.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Borona for the Applicant.

Mr. Mwangi for the DPP/Respondents.