



REPUBLIC OF KENYA



**Nyaga v Republic (Criminal Appeal E010 of 2025)
[2026] KEHC 5463 (KLR) (29 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5463 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL APPEAL E010 OF 2025**

**RL KORIR, J
APRIL 29, 2026**

BETWEEN

JONAH MUCEE NYAGA APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. Jonah Mucee Nyaga (Applicant) was charged with the offence of being in possession of a specified endangered wildlife trophy without a permit or other lawful exemption contrary to section 92(4) of the *Wildlife Conservation and Management Act*.
2. The particulars of the offence were that on the 28th day of January 2023 around 0030 hrs at Mukothima area in Tharaka North Sub-County, he was found in possession of five pieces of elephants' tusks weighing 21.5 Kgs with a street value of Kshs.2.1 million and were ferrying using motor cycle registration number KMFE 704Q blue in colour make Ranger without permit or lawful exemption from the Director General Kenya Wildlife Service.
3. He faced a second count, being dealing in wildlife trophy of a specified endangered species without permit or other lawful exemption contrary to section 92(2) as read with section 105 of the *Wildlife Conservation and Management Act* 2013, Laws of Kenya, and whose particulars were captured in the charge sheet.
4. At the conclusion of the trial, he was convicted vide a judgement dated 21st November 2024, and sentenced to pay a fine of Kshs.3,000,000 and in default to serve 5 years imprisonment. He was discharged in count II under section 35 (1) of Penal Code.
5. Dissatisfied with the judgement, the Applicant appealed to this court against conviction and sentence.



6. During the pendency of the appeal, the Applicant filed an undated Application seeking to be granted bail pending appeal. His application was received in the court registry on 1st October 2025.
7. The Application is stated to be brought on the grounds that the Applicant had filed an appeal which yet to be heard and determined. The Applicant enumerated the grounds contained in his appeal stating that the appeal had high chances of success as the trial court relied on uncorroborated evidence leading to a judgement which was not supported by evidence. The Applicant further stated that the Respondent would suffer no prejudice if he was granted bail.
8. The court directed the filing of a pre-bail report and also directed parties to file submissions.
9. At the hearing of the Application on 18th February 2026 the Respondents told the court that they were not opposed to the Application.

Analysis and determination

10. The right to bail is provided under Article 49 (i) of *the Constitution* which states:-
49(1) 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.”
11. Upon conviction however, an accused person loses the presumption of innocence which is the bedrock of the right.
12. The applicable legal provision is Section 357 of the Criminal Procedure Code which 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.

13. 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.....”

14. In the present case the Applicant states that he has high chances of succeeding on appeal and that he was apprehensive that his appeal may take long to be heard and determined.

15. I observe from the file that directions have already been given on the disposal of the appeal and that the Applicant has filed his submissions, while the Respondent has not.

16. This court is unable to make a determination on whether the appeal had high chances of success without going into the appeal itself.

17. Having considered the Applicant’s application, I have not found any exceptional circumstances to persuade me to exercise discretion in his favour. The order that commends itself to me is to proceed to conclude the appeal expeditiously. The Application is declined.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 29TH DAY OF APRIL, 2026.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Applicant acting in person and Miss Rukunga for the Respondent; Muriuki (Court Assistant).

