



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ISIOLO

HIGH COURT CRIMINAL APPEAL NO. E 002 OF 2026

JOSEPH NJUMWA

MKIMBO.....APPELLANT/APPLICANT

VERSUS

REPUBLIC

.....RESPONDENT

RULING

1. The Applicant / Appellant herein seeks to be released on bail, pending appeal. The Application is supported by his Affidavit sworn on 18/03/2026.
2. The Applicant states that he was sentenced to pay a fine of Ksh. 200,000 or serve a prison term of one year, in default. He was also ordered to refund ksh. 2, 300,000 to the complainant or serve a further one year in default, by the trial court.
3. It is the Applicant's case that his Appeal is meritorious and has high chance of success; that he is a Kenyan citizen with fixed abode, a known Residence and a family. He further stated that he was out on bond during trial and he never absconded; that he suffers from severe medical condition, which cannot be managed by prison medical facilities. He argues that there are therefore

exceptional and unusual circumstances that warrant him bail pending Appeal.

4. A copy of the petition of Appeal and a medical report from Isiolo prison's dispensary is attached.
5. The Respondent, through the prosecution Counsel, Mr Majale informed the court that the respondent is not opposed to the Application.

Determination

6. **Section 357 of the criminal procedure code (CPC)** provides for admission of a person already convicted to bail pending Appeal. However, bail under section 357 of CPC, unlike bail pending trial provided for under Article 49(1 (h), of the constitution may be granted at the discretion of the trial or the Appellate Court. It is not a right.
7. I have looked at the Affidavit and the annexures. The medical report states that the Applicant is a known asthmatic patient required to inhale 2 puffs of an inhaler twice a day. It is also submitted that the prison conditions are not conducive to his condition.
8. Asthma is a chronic but a common medical condition which is easily manageable. The submission that it cannot easily be managed at the prison clinic is therefore not plausible .
9. However the court is guided by the decision in the case of ***Jivraj Shah v Republic [1986] KECA 36 (KLR)*** the court of Appeal held that the merit of the Appeal and its overwhelming chance of success is also a material consideration. The court set out the criteria for granting bail pending Appeal as follows:

“1.The principal contribution in an application for bond pending appeal is the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it is in the interest of justice to grant bail.

2.If it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be argued and that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail exists.

3.The main criteria is that there is no difference between overwhelming chances of success and a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed and the proper approach is the consideration of the particular circumstances and weight and relevance of the points to be argued.

10. I have perused the petition of Appeal, and the issues raised therein include, among others, the legality of the sentence, whether the trial court exceeded jurisdiction and whether the subject offence was proved. It suffices to state that the issues raised are arguable, and worthy of being ventilated on Appeal.
11. Am satisfied that the Applicant has demonstrated that he has an arguable Appeal, and consequently he is entitled to bail on that ground. The Application is allowed.
12. The Applicant shall be released on a bond of ksh. 1,000,000 plus one surety of a similar amount or a cash bail of ksh. 500,000 in the alternative.

Dated, Signed and delivered at Isiolo, this 7th day of May
2026

S. Chirchir
Judge

In the presence of:-

Katelo -Court Assistant.
Ms. Maheli for the Applicant
Mr .majale - for the Respondent.
The Applicant

ORIGINAL