



**Odhiambo v Republic (Criminal Application E018 of 2024)  
[2025] KECA 472 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KECA 472 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION E018 OF 2024  
MSA MAKHANDIA, HA OMONDI & LK KIMARU, JJA  
MARCH 7, 2025**

**BETWEEN**

**BENJAMIN ELI ODHIAMBO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for bond pending appeal arising from the judgment and conviction of the High Court of Kenya at Siaya (Aburili, J.) dated 15th December 2021 in HCCRC No. 27 of 2018)*

**RULING**

1. The application before us is dated 18<sup>th</sup> April 2024 in which Benjamin Eli Odhiambo (“the applicant”), seeks to be released on bail pending the hearing and determination of his appeal. He was charged alongside another, Vincent Owuor Opondo, before the High Court of Kenya at Siaya, with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. Following a full trial, the trial court found the applicant guilty of the offence, convicted him, and sentenced him to life imprisonment in a judgment rendered on 15<sup>th</sup> December 2021 by Aburili, J. Immediately after the judgment, the applicant filed a Notice of Appeal evincing his intention to appeal. Pursuant to the notice, the applicant filed the instant application, anchored on Articles 49 (1) (h) & 51 of the [Constitution](#), sections 124 and 379 of the [Criminal Procedure Code](#), and all other enabling provisions of the law. The application, which is supported by undated affidavit sworn by the applicant, speak to the facts that: his appeal has very high chances of success; that during his trial, he had been granted bond and at no time did he abscond or breach the terms thereof and will not do so should this Court grant him bail. He also claims that he is a family man blessed with school-going children and an unemployed spouse who depend solely upon him. Additionally, that he had great responsibilities as a sole breadwinner to his family and it is only fair that, he be given an opportunity to continue discharging these responsibilities at home pending the hearing and determination of this appeal. That



he is also ailing in prison suffering from hypertension. That all the aforesaid reasons viewed as a whole, favour the applicant's admission to bail pending appeal.

3. No response to the application was filed by the respondent. When the application came up for hearing on 22<sup>nd</sup> October 2024, the applicant appeared in person virtually from Naivasha Maximum Prison. He opted to rely fully on the application, the grounds, and the affidavit in support thereof.
4. Learned Prosecution Counsel, Mr. Okango, in opposing the application relied on the cases of *Jivraj Shah v Republic* [1986] KLR 605 and *Dominic Karanja v Republic* (1986) KLR 612, in submitting that the applicant had not met the threshold for the grant of bail pending appeal. First, while the applicant alleges that he is ailing from hypertension, no documentary evidence had been availed in proof of the fact. In any event, it had also not been demonstrated that the correctional facility where he is held is ill-equipped to handle the medical condition. The fact that the applicant was granted bail during trial and did not violate the terms thereof is no panacea for allowing the application. In any event, upon conviction and sentence, the applicant's status changes since the presumption of innocence is lost. As a convict, therefore, there is reasonable apprehension that he may abscond. Additionally, apprehension of absconding is more profound in this matter, where the applicant has been sentenced to life imprisonment. The applicant cannot also cite the presence of children and unemployed spouse as reasons enough for the grant of bail pending appeal, counsel so submitted. The respondent lastly submitted that no exceptional and unusual circumstances had been demonstrated by the applicant to warrant the grant of bail pending appeal.
5. We have thoroughly considered the application, the submissions by the respondent, the authorities cited, and the law. The jurisdiction of this Court to release a convicted person on bail pending the hearing and determination of the appeal was set out in the case of *Jivraj Shah v Republic* (*supra*):

“The most important issue here is if the appeal has such overwhelming chances of success that there is no justification for depriving the applicant of his liberty. The minor relevant considerations would be whether there are exceptional or unusual circumstances. The previous good character of the applicant and the hardship, if any, facing the wife and children of the applicant are not exceptional or unusual factors: see *Somo v Republic* [1972] EA 476. A solemn assertion by an applicant that he will not abscond if he is released is not sufficient ground, even with support of sureties, for releasing a convicted person on bail pending appeal.”

6. Having reviewed the proceedings and decision of the trial court and without pre-judging the possible outcome of the pending appeal, it would appear to us that the appeal does not have overwhelming chances of success. In other words, whereas the appeal may appear arguable, it cannot be said to have an overwhelming chance of success.
7. As regards exceptional and unusual circumstances, the applicant argues that he is a family man and sole breadwinner for his family that he has several dependents relying on him and that the family structure would suffer greatly if the court denies his request. Additionally, the applicant claims that he was out on bail during his trial and has given undying assurance to abide by the terms that may be set by this Court in allowing the application. Suffice to state that these claims and assertions are not new. They have been frequently raised by applicants in applications of this nature before this Court. They were however debunked and laid to rest in the case of *Jivraj Shah v Republic* (*supra*). We need not therefore re-invent the wheel.



8. The applicant was convicted on 15<sup>th</sup> December 2021 and sentenced to life imprisonment. Given the nature of sentence, it is quite apparent to us that he will not have served a substantial portion of the sentence before the appeal is heard and determined.
9. In light of the foregoing, we come to the irresistible conclusion that the applicant has not met the threshold for the grant of bail pending the hearing and determination of his appeal. In result, the application dated 18<sup>th</sup> April 2024 lacks merit and is accordingly dismissed.

**DATED AND DELIVERED AT KISUMU THIS 7<sup>TH</sup> DAY OF MARCH 2025.**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

**H. A. OMONDI**

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**JUDGE OF APPEAL**

**L. KIMARU**

.....

**JUDGE OF APPEAL**

I certify that this is a True copy of the original

**DEPUTY REGISTRAR**

