



**Kuria v Republic (Criminal Application E111 of 2024)
[2025] KECA 711 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KECA 711 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E111 OF 2024
HA OMONDI, LK KIMARU & AO MUCHELULE, JJA
APRIL 25, 2025**

BETWEEN

DAVID WAWERU KURIA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for bond pending appeal from the judgment of the High Court at Migori (R. Wendoh, J.) dated 3rd October 2024 in HCCR No. E008 of 2022)

RULING

1. An accused who is waiting for the hearing and resolution of a criminal case against him is entitled to be released on bond under Article 49 of *the Constitution*. The right can only be interfered with if the prosecution places on record compelling reasons why such release should not occur. This is because the accused has in his favour the presumption of innocence. Once convicted and sentenced, however, he will not be entitled to be released on bail. This is because of the presumption that he has been properly convicted and sentenced. At that stage, he has to persuade the court to which he has appealed to exercise its discretion to release him on bail pending the hearing and determination of the appeal. He can only do this if he can show that the appeal has overwhelming chances of success, or that the appeal raises such prima facie exceptional or unusual circumstances that it would not be in the interest of justice to detain him while the appeal is awaited (see *Jivraj Shah -vs- Republic* [1986] KLR 605).
2. The applicant, David Waweru Kuria, and one Ayub Mafuvo Ndakwa were jointly charged and convicted by the High Court at Migori of the offence of murder under sections 203 and 204 of the *Penal Code*. Each was sentenced to serve 10 years in jail. The applicant was aggrieved by the conviction and sentence and appealed to this Court.
3. By way of motion dated 23rd October 2024, the applicant seeks to be released on bail pending the hearing and determination of the appeal. His reasons are that the appeal has overwhelming chances of



success; the appeal discloses exceptional circumstances; he is ailing and in need of medical attention; and that he was on bail, and did not abscond, while he was on trial. Learned counsel Mr. Athunga, while urging the application for the applicant, reiterated these grounds and added that the applicant was the sole breadwinner for his family which will suffer given the continued detention. He added that, given how long the appeal may take to be heard and determined, most of the sentence will have been served by the time of his eventual release.

4. Learned counsel further relied on the grounds in the memorandum of appeal in which it was stated that the applicant had been convicted on evidence that was not safe; the prosecution witnesses were not credible; crucial witnesses had not been called to testify; and that his defence had been disregarded.
5. Learned counsel Ms. Ikol for the State did not oppose the application, saying that it may take a long time before the appeal is heard and determined. She, however, conceded that the applicant had failed to demonstrate that his appeal had overwhelming chances of success.
6. We have considered the application, the grounds upon which it is based, and the settled principles that apply on the question of bail pending appeal.
7. At this stage we cannot go into the details of the appeal, or make determinative comments on the merits of the grounds in the memorandum. Nonetheless, the applicant was required to demonstrate to us that, prima facie, considering the totality of the evidence, the appeal was likely to succeed in regard to the conviction, or that the sentence was likely to be remarkably reduced to the extent that it was unfair at this stage to continue keeping him in jail. There was no such demonstration, even as the learned counsel for the State was conceding the application.
8. That the applicant was ailing in itself was not enough ground to have him admitted to bail, unless it was shown, which was not done, that the ailment was such that the prison medical facilities and their referral system could not attend to the situation. The fact that the appellant is the sole breadwinner of his family or that he was on bond, and did not abscond, while on trial do not make the application unusual or exceptional. (See *Peter Hinga Ngotbo -vs- R.* [2015]eKLR). Lastly, it was not shown that this Court's calendar is such that by the time the appeal is heard and determined a substantial part of the 10 years would have been served.
9. In conclusion, we find the application not merited and dismiss it.

DATED AND DELIVERED AT KISUMU THIS 25TH DAY OF APRIL 2025

H. A. OMONDI

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

A.O. MUCHELULE

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JUDGE OF APPEAL

This is a true copy of the original.

DEPUTY REGISTRAR

