



**Omondi v Republic (Criminal Appeal (Application)
E099 of 2024) [2025] KECA 1093 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1093 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPEAL (APPLICATION) E099 OF 2024
JW LESSIT, J MOHAMMED & A ALI-ARONI, JJA
JUNE 5, 2025**

BETWEEN

ALEX ODHIAMBO OMONDI APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for bond pending appeal from the conviction and sentence of the High Court of Kenya at Murang'a (Kimondo J.) dated and delivered on 6th February 2020)

RULING

1. Alex Odhiambo Omondi (the applicant) was charged with another, for the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) Cap 63. Upon being found guilty of the offence, the High Court convicted both of them to serve 20 years' imprisonment. The particulars of the charge were that on 7th March 2011, at Kora Sub Location in Murang'a North District, within Central Province, they jointly murdered Henry Wachira Kariuki (the deceased).
2. Aggrieved by his sentence and conviction, the applicant lodged an appeal to this Court. Pending the hearing and determination of his appeal, the applicant seeks this Court's intervention through the instant application dated 19th August, 2024 to be admitted on bond/bail or order of stay and/or suspension of execution of the sentence.
3. The application is predicated on grounds inter alia that during the trial at the High Court, the applicant was admitted to bond pending trial; that he adhered to all the conditions and bail terms that were set by the trial court; that he has a pending appeal before this Court which has high chances of success as he was convicted based purely on extraneous issues and conjecture; that the trial court misapprehended the facts, applied wrong principles of law and failed to consider issues that were brought out in the evidence of the defence; and that he has a family and a permanent residence and is not a flight risk.



4. In his supporting affidavit of even date, the applicant states that during the 9 years when the trial took place, he was admitted to bond terms, which he adhered to. The applicant further stated that his appeal has a high chance of success, as the prosecution's case was marred by contradictions and hearsay, which is not sufficient to sustain a conviction.
5. The applicant further deposed that he might suffer prejudice by the reasons that the hearing and determination of the appeal may be delayed, and having been convicted in 2020 he will have served a substantive part of his sentence. He further deposed that he is the breadwinner of his young family including young school going children and that he has the sole responsibility of paying their school fees.
6. The applicant further deposed that he is a person of good character having served as a police officer. He also reiterated that he has a fixed abode and he is therefore not a flight risk. The applicant urged us to uphold the Constitution and protect him in the interests of justice by granting the prayers sought in his application.

Submissions by Counsel.

7. At the hearing of this application, the applicant appeared in person while the Senior Assistant Director of Public Prosecutions Mr. Naulikha appeared on behalf of the respondent. The applicant relied entirely on his submissions, while Mr. Naulikha opposed the appeal orally and through written submissions.
8. In his written submissions, the applicant submitted that the instant application is brought pursuant to Rule 5(2)(a) of the Court of Appeal Rules. The main thrust in the applicant's submissions is that his appeal has a high likelihood of success. He urged us to find that he has demonstrated exceptional circumstances to warrant his release on bond pending appeal, being; family responsibilities, impact on his children; his aged grandmother's health challenges; his own deteriorating health; compliance with previous bail terms; and that he has rehabilitated and maintained good conduct.
9. The applicant relied on several decisions including *Jivraj Shah vs Republic* [1986] KECA 36 (KLR), *Waluke vs Republic* [2022] KECA 1267 (KLR) and *Daniel Dominic Karanja vs Republic* [1986] eKLR for the proposition that the principal consideration is the existence of exceptional or unusual circumstances upon which the court can fairly conclude that it is in the interest of justice to grant bail. The applicant submitted that the proper approach is the consideration of the particular circumstances and the weight and relevance of the points to be argued. The applicant urged us to find merit in his application and grant the orders sought.
10. Opposing the appeal, Mr. Naulikha submitted that a court of competent jurisdiction tried the applicant. Counsel further submitted that the trial court considered the mitigating and aggravating circumstances and meted out a punishment a jail term of 20 years' imprisonment, which the applicant is lawfully serving.
11. Counsel further submitted that the rights under Article 49 (1) (h) of the Constitution are only applicable during the trial. Counsel submitted that at the end of the trial, all the sureties and cash deposits were returned. The respondent refuted that the applicant has demonstrated exceptional and/or unusual circumstances to warrant grant of the orders sought.
12. Counsel further submitted that the sentence meted out on the applicant was not punitive given that the applicant was facing murder charges. Counsel submitted that an application for bail pending appeal is speculative and not grounded on legal and/or factual pillars. Counsel urged us to dismiss the application for lack of merit.



Determination.

13. We have considered the application, the oral and written submissions of the parties, the authorities cited and the law. The issue for determination is whether the applicant has satisfied the conditions for grant of bail and/or bond pending the hearing and determination of the appeal.

14. The right to bail or bond is well grounded under Article 49 (1) (h) of *the Constitution*, which provides that: -

“An accused person has the right: -

(h) 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.”

15. There is a distinction between bail granted before a trial and after a trial at the appellate stage. Before his conviction, the applicant was presumed innocent. However, his status changed upon conviction, and the stark reality is that presumption of innocence no longer operates in his favour. This rationale was addressed by this Court in the case of *Langat vs Republic (2022) KECA 1043 (KLR)* in the following terms:-

“The principles which guide the Court in an application for bail pending appeal are very distinct from the principles in an application for bail pending trial. In the latter application, the accused person’s guilt is yet to be proved and so the law presumes him to be innocent. He has a right to bail unless the prosecution establishes compelling reasons why that right should be denied. In the former application, however, the applicant has already been convicted by a court of competent jurisdiction. The presumption of the law at that stage is that the applicant is properly convicted. Hence the onus is on the applicant to satisfy the Court that his appeal has overwhelming chances of success or that there are special circumstances that warrant grant of bail pending the hearing of the appeal.”

16. In *Jivraj Shah (supra)* the principal considerations for granting bail pending appeal were stated as follows: -

“(1) The principal consideration 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 face 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 a 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



17. Further, in Daniel Dominic Karanja vs Republic [1986] eKLR this Court emphasized: -

“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...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. The applicant was certified to be fit by a doctor on September 23, 1986 and so no issue of ill-health arises. We are not to be taken to mean that ill-health per se would constitute an exceptional or unusual circumstance in every case. There exist medical facilities for prisoners in the country.”

18. The applicant was found guilty of the offence of murder and sentenced to 20 years’ imprisonment. He deposed that he was the breadwinner to both his family and his ailing grandmother. He also contended that he previously served as a police officer. This alludes to the fact that he is no longer in active police service. We have no evidence placed before us that the applicant is in gainful employment. Furthermore, the evidence of his sickness and that of his grandmother has not been proven by way of medical records. Neither did the applicant depose in his affidavit the proposed sureties nor the proposed bail and/or bond terms.

19. The burden of establishing the exceptional circumstances lies squarely with the applicant. We are not satisfied that there are any exceptional circumstances to warrant a grant of bail pending appeal. The applicant has not met the threshold required in an application of this nature.

20. The upshot is that the notice of motion is devoid of merit and is dismissed.

DATED AND DELIVERED AT NYERI THIS 5TH DAY OF JUNE, 2025.

JAMILA MOHAMMED

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JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL ALI - ARONI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

