



REPUBLIC OF KENYA



**Walo v Republic (Criminal Appeal E118 of 2022)  
[2023] KECA 205 (KLR) (17 February 2023) (Ruling)**

Neutral citation: [2023] KECA 205 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPEAL E118 OF 2022  
HM OKWENGU, M NGUGI & F TUIYOT, JJA  
FEBRUARY 17, 2023**

**BETWEEN**

**LUCAS ONYANGO WALO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for Bail pending an appeal from the judgment of  
the High Court of Kenya at Siaya (Aburili, J) dated 22nd March, 2022)*

**RULING**

1. The law on grant of bail pending appeal has over the years been formulated by our courts and is now old hat. It substantially turns on the applicant demonstrating that there are exceptional circumstances to warrant the grant of bail when there is already conviction by a competent court of law (see [Jivraj Shah v Republic](#) [1986] KLR 605)
2. Lucas Onyango Walo, the appellant was convicted and sentenced to life imprisonment for the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). He is before us on his notice of motion dated May 26, 2022 in which he seeks to be admitted to bail pending the hearing and determination of this appeal. The motion is brought under the provisions of section 357(1) of the [Criminal Procedure Code](#) and in support the applicant has sworn an affidavit on May 26, 2022 in which he deposes that; before the trial court he was denied bail on the basis of a fabricated probation report which he did not have an opportunity to challenge; he is not a flight risk and undertakes to appear before this court as and when required; the evidence of one of the prosecutions witnesses (PW7) was that no information was circulated to any police station that he was being looked for in relation to the death of the deceased; and he is willing to comply with any condition that we may impose as security for his court attendance.
3. The application is opposed.



4. We have considered the submissions of Mr. Lugano appearing for the applicant and Mr. Okang’o for the respondent.
5. It seems to us that the applicant is simply trying his luck to get passed well settled principles for the grant of bail pending appeal and ought to know that his application is without merit. We say, without equivocation, that the mere fact that the applicant is not a flight risk does not make him eligible to bail. Examples of exceptional circumstances have been given before by this Court. For instance, if there is a likelihood of the appellant serving a substantial part of the sentence by the time the appeal is heard and determined (see *Jivraj Shah* (supra)).
6. There was an attempt by counsel for the applicant to add an additional ground in the filed submissions; that the continued incarceration of the applicant will cause hardship to his wife and child as he is the sole breadwinner of the family. This runs into immediate difficulty as it was not deposed to in the affidavit in support of the application and is therefore unproved. At any rate, such hardship does not constitute an exceptional or unusual factor in the scheme of a bail pending appeal application (*Dominic Karanja V Republic* (1986)KLR 612).
7. The notice of motion dated July 26, 2022 is accordingly hereby dismissed.

**DATED AND DELIVERED AT KISUMU THIS 17TH DAY OF FEBRUARY, 2023.**

**HANNAH OKWENGU**

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**JUDGE OF APPEAL**

**MUMBI NGUGI**

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**JUDGE OF APPEAL**

**F. TUIYOTT**

.....

**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

**DEPUTY REGISTRAR**

