



**VBK v Republic (Criminal Appeal E016 of 2024)
[2025] KEHC 891 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 891 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL APPEAL E016 OF 2024
SC CHIRCHIR, J
JANUARY 30, 2025**

BETWEEN

VBK APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Appellant herein was charged at the Magistrate’s court with being in possession of fake foreign currency and sentenced to 4 years imprisonment. He has filed the present Notice of Motion seeking for bail pending Appeal. The Motion is supported by the grounds appearing on the face of the application as well as the Appellant’s Advocate Affidavit sworn on 15th March 2024.
2. The Appellant submits that his appeal has an overwhelming chance of success since the prosecution failed to prove that the purported counterfeits USD dollars belonged to him and neither did he sign the inventory.
3. The applicant further states that he is suffering from a chronic medical condition and may be unable to access the required medical attention on time if he stays in prison. He has attached a letter from the prison’s dispensary indicating that is an HIV patient.
4. The application was canvassed by way of written submission.

Applicant’s submissions

5. The Applicant has relied on the case of Ademba vs. Republic 1983 eKLR and Jivraj Shah vs. republic (1986) eKLR., which sets out the principles to be considered when the court is determining an Application of this nature.



6. He reiterates that his Appeal has high chances of success . He also argues that his medical condition qualifies as an exceptional reason to entitled him to bail.
7. The Respondent did not file a response or submissions.

Determination

8. Section 357 (1) of the Criminal Procedure Code provides for admission to bail or suspension of sentence pending appeal. It states as follows:

“After the entering of an appeal by a person entitled to appeal, the High Court, or the subordinate court which convicted or sentenced that person, may order that he be released on bail with or without sureties, or, if that person is not released on bail, shall at his request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal:

Provided that, where an application for bail is made to the subordinate court and is refused by that court, no further application for bail shall lie to the High Court, but a person so refused bail by a subordinate court may appeal against refusal to the High Court and, notwithstanding anything to the contrary in sections 352 and 359, the appeal shall not be summarily rejected and shall be heard, in accordance with such procedure as may be prescribed, before one judge of the High Court sitting in chambers.

9. It is now well settled that bail pending Appeal, unlike bail pending trial, is not a constitutional guarantee. In the case of Charles Owanga Aluoch v Director of Public Prosecutions [2015] eKLR for instance, the court held: ‘.....Bail is a constitutional right where one is awaiting trial. After conviction that right is at the court’s discretion and upon considering the circumstances of the application.
10. The court went on to set out the principles that guide the court’s aforesaid discretion. It held: The courts have over the years formulated several principles and guidelines upon which bail pending appeal is anchored. In the case of Jiv Raji Shah vs. R [1966] KLR 605, the principle 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 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.”

11. On whether the Appeal has high chances of success, I have perused the memorandum of Appeal. The Appellant has complained that the search of his house was conducted in his absence ; that he did not sign the inventory; that the search was conducted in his absence. He further sates that his Co-accused testimony was relied on, yet their relationship had broken down.



12. Whereas the issues are triable, I have my reservations on whether the chances of succeeding are high. I noted for instance that the testimony of his co- accused tallied with the prosecution witnesses' testimonies on how the currency was found.
13. The Appellant has further stated that he suffers from a chronic illness. However the nature of the illness is not uncommon and easily manageable by the treatment offered at the prison facilities. Indeed the prison medical officer stated in the letter that the Appellant is already on Antiretroviral therapy

In the case of *Dominic Karanja v Republic* (1986) KLR 612 stated inter alia that "ill health perse would not constitute an exceptional circumstance where there exists medical facilities for prisoners".
14. The Appellant has failed to demonstrate that there exists unusual or exceptional circumstances to warrant him bail pending Appeal. Consequently the Application is disallowed.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 30TH DAY OF JANUARY 2025.

S. CHIRCHIR

JUDGE.

