



REPUBLIC OF KENYA



**KENYA LAW**  
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**Rono v Republic (Criminal Appeal E010 of 2024)  
[2025] KEHC 9019 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9019 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CRIMINAL APPEAL E010 OF 2024  
CM KARIUKI, J  
JUNE 26, 2025**

**BETWEEN**

**PAUL KOECH RONO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the conviction and sentence of Hon. H.M. Nyaberi  
(C.M) in Narok MCCR No. 212 of 2020 delivered on 12.08.2024)*

**RULING**

26/05/2025

1. The trial court convicted the appellant and sentenced him to serve 4 years' imprisonment for the offence of stealing by agent contrary to section 283[b] of the *penal code*.
2. The particulars were that on 24/05/2020 at about 6.00 a.m. in Torokiat village in Narok South Sub-County, within Narok County, jointly with others not before the court being an agent, Sheila Tenget stole six herds of cattle valued at kshs. 360,000/= which had been entrusted to the appellant to retain in safe custody during the ongoing ethnic clashes between the Kipsigis and Maasai communities within the Oloipangi area.
3. Being dissatisfied with the said conviction and sentence, he preferred an appeal vide a petition of appeal dated 22/08/2024.
4. Pending the hearing of the appeal, the appellant has filed an application dated 24/02/2025, seeking for orders that the applicant be released on bail with or without surety pending the hearing and determination of this appeal and in the alternative, this court do suspend the custodial sentence imposed on the appellant by the subordinate court with the result that appellant be released from the prison as the appeal is heard and decided.



5. The application is premised on Section 356[I] and 357[I] of the *Criminal Procedure Code*.
6. The application is based on the grounds set out on the face of the application and the supporting affidavit of Paul Koech Rono
7. The applicant contends that there exist special and unique circumstances in the appeal, upon which the court can fairly conclude that it is in the interest of justice to grant bond pending the Appeal or prayers sought.
8. The applicant contends that there are very high chances of a successful appeal.
9. The applicant averred that chances are that the appellant may end up serving the full time or substantial terms in jail, notwithstanding the existence of the appeal, if he is not released on bond.
10. The Applicant is alive to the fact that should he lose the appeal, then he shall resume his custodial sentence, and that the time he shall be out on bail shall be excluded from the computation of the custodial sentence.

### **The Response.**

11. The respondent opposed the application vide grounds of opposition dated 07/03/2025 on the following grounds:
  1. That there exist no exceptional or unusual circumstances upon which the court can fairly conclude that it is in the interest of justice to grant bail.
  2. That the Appeal is weak and does not at all have any high chance of success because the prosecution proved its case beyond a reasonable doubt.
  3. That the Appellant/Applicant was convicted rightly, as there are no inconsistencies in the witness statements and evidence on record.
  4. That the Appellant/Applicant has not met any ground at all to be granted bail, and further that there are no compelling reasons to have him granted bail pending Appeal.
  5. THAT the fact that the 1st and 2nd Prosecutions witnesses are not a justifiable reason or special circumstance to warrant the release of the Appellant/Applicant to be released on bail pending Appeal.
  6. That the application is misleading, full of half-truths, and it does not disclose any special/peculiar circumstances to grant the order prayed for and ought to be dismissed.

### **Directions of the Court.**

12. The application was canvassed by way of written submissions.

### **The Applicant's Submissions.**

13. The applicant submitted that the exceptional circumstances to warrant the Appellant's bond pending appeal are that the learned magistrate erred in fact in making a finding that the report made by the Appellant of the alleged theft to the law enforcers was a cover-up, hence ending up convicting the Appellant unjustly. The Learned magistrate also erred in fact by totally relying on the evidence of the 1st and 2nd prosecution witnesses, who are relatives who were bent on pinning down the Appellant. The appellant relied on *Jivraj Shah v Republic* [1986] KLR 605.



14. The applicant submitted that the Appeal is meritorious with a high chance of success. The applicant contends that his supporting affidavit shows instances where the learned magistrate has erred in fact and law. The prosecution did not in any way establish the mens rea in the Appellants' actions. The magistrate erred in fact by not making a finding that, the situation at the time of the alleged commission of theft, the situation was quite volatile and hence the allegations of the Appellant of theft of the subject animals could hold. The appellant relied on Criminal Appeal E039 2024 in the High Court at Nakuru, [\*Ademba v Republic\*](#) 1983.
15. The applicant submitted that he is not a flight risk, as shown by the court's proceedings. He was always showing up in court whenever needed. The Appellant is a resident of Narok South, his place of residence is well known, and he is not a flight risk as he always stays and works at his home.

### **The Respondent's Submissions.**

16. The respondent submitted that the Appellant has not demonstrated that there exist circumstances that would warrant this court to grant him bond pending appeal. The respondent contends that the only reason that the Applicant has tendered before this court is that the trial court relied on the evidence of PW1 and PW2, who are relatives of the Applicant, to convict him. It is submitted that this does not in any way pass as a peculiar or unusual circumstance to have him admitted on bond pending hearing of his Appeal, as the said witnesses were competent enough to stand as such before the trial court. The respondent relied on
17. Section 357 of the [\*Criminal Procedure Code, Jivraj Shah v Republic\*](#) [1986] eKLR, [\*Chimambhai v Republic\*](#) 1971 EA 343, [\*James Muthiora & Another v Republic\*](#) [2021] eKLR, and [\*Dominic Karanja v Republic\*](#) [1986] KLR 612.

### **Analysis and Determination.**

18. I have considered the application, the response, and the submissions filed herein. The broad issues for determination are;
  - i. Whether the applicant should be granted bond pending appeal.
19. Section 357[1] of the [\*Criminal Procedure Code\*](#) provides for the granting of bail pending appeal, it states that: -

After 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.

20. The principles for granting bond pending an appeal were set out in the case of [\*Jivraj Shah v Republic\*](#) [1986] KLR 605, which laid down the principles 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 are 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.”

21. In *Dominic Karanja v Republic* [1986] KLR 612, the Court of Appeal held: -

- a. The most important issue was that if the appeal had such overwhelming chances of success, there is no justification for depriving the applicant of his liberty, and the minor relevant considerations would be whether there were exceptional or unusual circumstances;
- b. The previous good character of the applicant and the hardships, if any, facing his family were not exceptional or unusual factors. Ill health per se would also not constitute exceptional circumstances where there existed medical facilities for prisoners.
- c. A solemn assertion by an applicant that he will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal.

22. Similarly, in *Peter Hinga Ngoto v Republic* [2015] eKLR, it was held that the fact that the applicant did not breach the bail conditions in the court below is not an exceptional circumstance which can warrant a decision to admit an applicant to bail pending appeal.

23. I concur with the Respondent’s submissions that the reasons provided by the applicant do not constitute exceptional or unusual circumstances. The applicant has not presented this court with evidence of exceptional and extraordinary circumstances that would justify bail pending appeal. His grounds for appeal are acknowledged alongside the proceedings before the trial court. I must exercise caution not to engage with the merits or demerits of the appeal.

24. Appeals in this court are considered expeditiously. The appellant has lodged an appeal; he should pursue it. His application lacks merit and is therefore dismissed.

25. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 26<sup>TH</sup> DAY OF JUNE, 2025.**

.....  
**CHARLES KARIUKI**  
**JUDGE**

