



**Ochwada v Republic (Criminal Appeal E029 of 2025)
[2025] KEHC 11715 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11715 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL APPEAL E029 OF 2025
WM MUSYOKA, J
JULY 31, 2025**

BETWEEN

DAN BENE A OCHWADA APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The application, dated 12th June 2025, seeks admission of the appellant to bond pending appeal. There is a petition of appeal, dated 12th June 2025, where it is averred that he was convicted in Port Victoria SRMCSOA No. E007 of 2024, on 28th May 2025, and was sentenced, on 11th June 2025, to 25 years in jail.
2. A copy of the judgement, of 28th May 2025, is not attached, and I cannot tell the offence for which he was convicted. I cannot even tell whether the appellant was ever tried at all, convicted and sentenced, as alleged in the petition of appeal, given that, in his affidavit in support of the instant application, he has not annexed any documents, and he has made no averments as to what the case against him was, in which court, and it bore which serial number.
3. These are criminal proceedings. Rules of procedure are adhered to strictly, given that these proceedings relate to personal life and liberty, and that, since they are at the instance of the Republic, a high level of transparency and accountability is expected. The strictness of procedure applies to both the Republic and accused persons.
4. It is not enough for the appellant, in his petition of appeal, to disclose the trial court case number and the outcome of those proceedings, it is critical that evidence be placed on record that that trial case existed and the outcome that is alleged in fact existed. That could be established by merely attaching a copy of the judgment. That is easy to find, for the judgement is published in the CTS, upon delivery, so no party should have an excuse.



5. I am being invited to grant bail pending appeal, in respect of a person who I cannot tell what he was convicted of, and I cannot verify the sentence imposed on him. He has not bothered to make averments on these issues, nor to annex relevant documents.
6. I only heard it from the mouth of his Advocate, at the Bar, that he was convicted of defilement. I have no document before me to verify that. Submissions that Advocates make at the Bar should have a foundation, which should be found in their filings. Very “beautiful” submissions were made, on bail/bond pending appeal, but there was no foundation for them, for fundamental documents were not filed, to disclose what the matter is all about. The appeal arises from a conviction; I have no evidence of a conviction and a sentence. I would have problems exercising jurisdiction in the circumstance.
7. Grant of bail/bond, at whatever level, is about exercise of discretion. Exercise of discretion should have some basis. At trial court, it is with respect to a person who is in custody pending trial, based on a charge that is before the court. The starting point for the court would be the charge. On appeal, the charge will have been proved, and therefore, the charge would be secondary, the primary basis would be the conviction, sentence and appeal. There ought to be material to show that there was a conviction and sentence, and an appeal. Conviction and sentence would require a copy of the judgement. That is basic, and the starting point. Without a copy of the judgement, the appellate court would have no foundation to consider bail pending appeal.
8. One of the issues that arises at this level would be whether there were issues worth considering on appeal. These would, of course, be outlined in the petition. However, evaluation of the arguability of these grounds can only be from a study and analysis of a judgement. Without a copy of the judgement, against which the petition should be looked at, it would not be possible to evaluate that the grounds of appeal are arguable. They are drawn from the judgement. It would be prudent to see what the judgement itself says, to evaluate whether the grounds of appeal have foundation.
9. The Advocates who argued before me were very eloquent, in their submissions, on whether I should grant bond. They eloquently captured the various points of law with admirable persuasion. However, there is no basis for me to even consider the application on the issues that they so eloquently addressed me on, for the reasons that I have given above.
10. Had the trial court records be availed, the situation would have been ameliorated. The trial court file has not been availed. In the absence of the foundational material there is nothing for me to consider. The application, dated 12th June 2025, is hereby dismissed. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 31ST DAY OF JULY 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Otieno, instructed by Masiga Otieno & Associates, Advocates for the appellant.

Ms. Mutella, instructed by the Director of Public Prosecutions, for the respondent.

