



**Wara v Republic (Criminal Appeal E038 of 2025)
[2025] KEHC 11205 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11205 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL APPEAL E038 OF 2025**

**A MABEYA, J
JULY 30, 2025**

BETWEEN

ALPHONCE OWILI WARA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the conviction and sentence of Hon. L. Kiniale SPM passed on the 26/03/2025 in Nyando SMPCR Case No. 207 of 2023, Republic v Alphonce Owili Wara)

RULING

1. The applicant/appellant was charged with the offence of grievous harm contrary to section 234 of the *Penal Code*, Cap 63 Laws of Kenya. He pleaded not guilty and a trial ensued. The trial court found him guilty, convicted and sentenced him to 3 years' imprisonment on 26/3/2025.
2. On 28/3/2025, he presented this appeal setting out 10 grounds of appeal. Together with the Petition of appeal, he took out on the same day a Motion on Notice seeking to be admitted to bond pending appeal.
3. The grounds for the Motion were set out in the body of the Motion and his Supporting affidavit of 28/3/2025. These were that; his appeal had overwhelming chances of success, that he may end up serving a substantial part of the sentence before the appeal is heard, that he is suffering from a serious disease and that he was willing to abide by any such reasonable terms and conditions that may be imposed by the Court for the grant of the same.
4. The applicant filed submissions dated 5/6/2025 which he relied on, on 3/7/2025 when the Motion was heard. He submitted that the appeal had high chances of success. He rehearsed the grounds of appeal and further submitted that the offence arose out of a Land case that is pending in court in Nyando ELC No. 50 of 2025. That he can only set aside the judgment therein if he is out on bail. That he needed medical attention which he can only get if released on bail.



5. Ms. Kagali, the Prosecution Counsel opposed the Motion. She submitted that there were no special circumstances in the case to warrant the granting of the bail pending appeal. That the hearing of the appeal could be expedited.

6. The jurisdiction for granting bail pending appeal is provided for under section 357 of the Criminal Procedure Code: -

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“(1) 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.”

7. The view this Court takes is that, since an applicant for bail pending appeal has been fully tried and found guilty, bail pending appeal is not a right but is discretionally. That discretion should, like all others, be exercised judiciously and not capriciously. In this regard, some of the issues to be considered are the character of an applicant, whether the appeal is frivolous or not, possibility of substantial delay in the determination of the appeal and any other special circumstances.

8. In the present case, although the applicant indicates that he was suffering from an illness that required attention while outside prison, there was no allegation that the health facilities offered within Prison where he is currently being held were unable to offer such services.

9. The other issue is the nature of the offence for which the applicant was convicted. It involved physical violence. It emanated from a land case which he himself states is still alive. Further, the proceedings from the lower court in this matter are ready and what remains is the preparation of the record and the filing of the submissions.

10. In view of the foregoing, I find that there are no special circumstances in this case to warrant the grant of bail pending appeal as sought.

11. Accordingly, the Motion dated 28/3/2025 is without merit, I dismiss the same and direct the Deputy Registrar of this Court to immediately finalize the preparation of the record of appeal, serve the same for preparation of submissions and ultimate hearing of the appeal within 90 days of this ruling.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 30TH DAY OF JULY, 2025.

A. MABEYA, FCI Arb

JUDGE

