



Mwangi & another v Republic (Criminal Appeal E074 & E075 of 2025 (Consolidated)) [2025] KEHC 12204 (KLR) (28 August 2025) (Ruling)

Neutral citation: [2025] KEHC 12204 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E074 & E075 OF 2025 (CONSOLIDATED)**

**DR KAVEDZA, J
AUGUST 28, 2025**

BETWEEN

PAUL MWAURA MWANGI 1ST APPLICANT

SOSPETER KUNGU NGUGI 2ND APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for bail pending appeal from the conviction and sentence delivered by Hon. Murage (PM) on 19th May 2025 at Kibera Chief Magistrate's Court, Criminal case no. E793 of 2021 Republic vs Sospeter Kungu Ngungi & Paul Mwaura Mwangi)

RULING

1. The applicants were jointly charged and, after a full trial, convicted of the offence of extortion contrary to section 300(1)(a) of the Penal Code. Each was sentenced to three years' imprisonment. In count II, the first applicant was separately charged and convicted of the offence of illegal reconnection of electrical energy after disconnection contrary to section 168(1)(c) of the *Energy Act* No. 1 of 2019. He was sentenced to one year's imprisonment, the sentences to run concurrently.
2. Being dissatisfied with both conviction and sentence, each applicant filed a separate appeal. The appeals were subsequently consolidated by this Court. The first applicant thereafter filed a Notice of Motion dated 3rd July 2025 seeking release on reasonable bail or bond pending appeal, while the second applicant filed a similar application dated 28th May 2025. This ruling addresses the two applications.
3. The applications are premised on the grounds set out on their face and in the supporting affidavits. The first applicant contends that the custodial sentence is short and that the appeal risks being rendered nugatory as he may serve a substantial portion before determination. He further states that he has a family, a permanent place of residence within the jurisdiction, that he faithfully attended trial, is not a flight risk, and undertakes to comply with any terms imposed by the Court.



4. The second applicant similarly contends that his appeal has high chances of success, that the sentence imposed is short, and that he is likely to serve a substantial part of it before the appeal is heard, thereby rendering the appeal nugatory.
5. The applications were canvassed by way of written submissions, which the Court has considered and need not reproduce here.
6. Having considered the applications, the supporting affidavits, the written submissions, and the applicable law, the issue for determination is whether the applicants have satisfied the threshold for the grant of bail pending appeal.
7. The provision of law that applies to bond/bail pending appeal is section 357 of the Criminal Procedure Code (Cap 75) Laws of Kenya, which provides as follows:
 - (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.
8. The principles for granting bond pending an appeal were reiterated 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 facie 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.”
9. In the case of *Chimambhai vs Republic* 1971 EA 343, J. Harris made another observation in such an application when he said;

“The case of an appellant under sentence of imprisonment seeking bond lacks one of the strongest elements normally available to an accused person seeking bail before trial, namely, the presumption of innocence, but nevertheless the law of today frankly recognizes, to an extent at one time unknown, the possibility of the conviction being erroneous or the punishment excessive, a recognition which is implicit in the legislation creating the right of appeal in criminal cases.....”
10. Under Article 49 of *the Constitution* of Kenya, 2010, an accused person who is facing a criminal charge has a right to bond/bail because he is presumed to be innocent till proven guilty, unlike a case where one is already convicted. In the cases cited above, the courts also held that an anticipated delay in the hearing of the appeal, together with other factors, may be grounds for the grant of bail pending appeal.



11. On the question of exceptional circumstances, the first applicant stated that he is a family man, the sole breadwinner, of good character, and that he honoured bail conditions during trial. These do not, however, amount to exceptional circumstances. Section 357(1) of the Criminal Procedure Code vests this Court with discretion to grant bail pending appeal, but such discretion must be exercised judiciously and only in the presence of sufficient cause. As the Court held in *Daniel Dominic Karanja v Republic* (1986) KLR, the availability of sureties, ill health, or the suffering of a convict's family are not grounds for granting bail pending appeal. The applicant's assertion that he is the sole breadwinner, though regrettable, does not constitute an exceptional circumstance. He is now a convicted person and the presumption of innocence no longer applies.
12. It is recognised that in considering bail pending appeal under Section 357 CPC, the Court may take into account factors such as anticipated delay in hearing the appeal, the length of the sentence, whether the applicant pleaded guilty, and the possibility of a non-custodial sentence (see *Krishnan v The People* (SCZ 19 of 2011) [2011] ZMSC 19 (20 October 2011)). Compliance with bail terms during trial, while commendable, is not an exceptional circumstance.
13. The applicants also contended that they are likely to serve a substantial portion of their sentence before the appeal is heard. The record shows that each was sentenced to three (3) years' imprisonment. The record of appeal is complete, the consolidated appeal has been admitted, and what remains is the filing of submissions after which a hearing date will be fixed. The applicants were convicted in May 2025, and this Court is currently hearing 2025 matters. The appeal will therefore be heard expeditiously and without delay. It cannot therefore be said that the applicants will have served a substantial part of their sentence before its determination.
14. The second applicant further claimed that his appeal has high chances of success. I have considered the grounds of appeal and the offences for which he was convicted. On the face of the petition, the prospects of success cannot be described as overwhelming.
15. In the circumstances, and guided by Section 357 of the Criminal Procedure Code, the Court finds that the applicants have failed to demonstrate the existence of exceptional circumstances to warrant the grant of bail pending appeal. The applications dated 3rd July 2025 and 28th May 2025 are devoid of merit and are hereby dismissed.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY IN THE ABSENCE OF THE PARTIES THIS
28TH DAY OF AUGUST 2025**

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D. KAVEDZA

JUDGE

