



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**CRIMINAL APPEAL NO. 134 OF 2010**

**BETWEEN**

**KAYO ONGONDO OTIENO.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

**RULING**

**Kayo Ongondo Otieno**, the applicant, has lodged this notice of motion dated 1<sup>st</sup> February, 2011, seeking one main order, namely, that he be released on bail pending the hearing and determination of his appeal. There are two main reasons given for the application, namely, that his health has deteriorated since imprisonment and that his appeal has overwhelming chances of success. There is a supporting affidavit of the applicant which affidavit is an elaboration of the two grounds.

When the application came up before me for hearing counsel for the applicant reiterated the above grounds and urged me to admit the application to bail pending his appeal.

Mr. Oluoch, Learned Senior Deputy Prosecution Counsel opposed the application on the ground that the appeal has no chance of success and that there are no other exceptional or unusual circumstances demonstrated by the applicant.

I have considered the application, the submissions of counsel and the authorities cited to me. I have further given due consideration to the record of the lower court. Having done so, I take the following view of the matter. It is settled that the important issue to be considered in an application for bail pending appeal is whether the appeal has overwhelming chances of success (**See Dominic Karanja - VS- Republic (1986) KLR 612**). I have considered the evidence upon which the appellant was convicted and the judgment of the Learned Senior Resident Magistrate and considered the same against the grounds of appeal put forward by the applicant and have formed the view that the applicant's appeal indeed has overwhelming chances of success. There is therefore no justification for denying bail. That being my view the application, the same is allowed in terms of prayer (2) thereof. The applicant may be released on bond of Kshs. 300,000/- with a surety of a similar amount pending the hearing and determination of his appeal.

I also admit this appeal to hearing before a single judge at this station for an hour.

Orders and directions accordingly.

**DATED AND DELIVERED AT ELDORET THIS 7<sup>TH</sup> DAY OF APRIL 2011**

**F. AZANGALALA**

**JUDGE**

Read in the presence of:-

Mr. Kitigin H/B for Wanga for the appellant and

Mr. Oluoch for the State.

**F. AZANGALALA**

**JUDGE**

**7<sup>th</sup> April, 2011**