



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL CASE NO.11 OF 2009**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

- 1. DICKSON MWANGI MUNENE.....1<sup>ST</sup> ACCUSED**
- 2. ALEXANDER CHEPKONGA FRANCIS.....2<sup>ND</sup> ACCUSED**

**RULING**

Without utmost humility and profound respect to Mr. Murgor Advocate, I am clear and certain about the decision I have made. It is based on my understanding of the law and appreciation of the facts as presented by the prosecution and defence. My decision is based on the fact that the prosecution proved its case beyond reasonable doubts. If there were doubts or uncertainties in my mind, this court would not have convicted the two accused persons. It is my cardinal and unequivocal responsibility to ensure that justice is done to all parties who appear before me. It is not my duty or responsibility to base conviction or decision when there are no good grounds for doing so. I always remind myself of my oath of office and respect for human dignity and above all my faith tells me that it is wrong to take away a right of a person wrongly. The day, I fail to adhere to the basic tenets that guide me, then I would have failed the honour and privilege bestowed upon me by the people of Kenya. In that, I reiterate that my judgment and sentence is solely based on my appreciation of the law as it is. It is not based on any other round or reason. I may be right or wrong but who is the judge of this judge? Definitely, this court cannot determine whether the conviction and reason therein has resulted in a miscarriage of justice to the 1<sup>st</sup> accused person. As Mr. Murgor Advocate rightly pointed out, the most important issue in determining whether the intended appeal has an overwhelming chances of success is to examine, scrutinize and interrogate the facts and the law as determined by this court. I am not in a position to interrogate and examine the validity and legality of my decision. One thing is that I am, certain about is that, I totally believe and own the decision. I have complete and clear conviction that the decision is without any misdirection or error only time will tell whether that position is right or not. As things stand, I am of the view that the application for bail pending appeal is misconceived. I have no jurisdiction to grant bail to a person convicted and sentenced for murder. Consequently the application is refused.

**M. WARSAME**

**JUDGE**

**12/10/2011**