



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**

**Criminal Appeal 77 of 2009**

**WILLIAM CHUMBA:.....APPELLANT**

**VERSUS**

**REPUBLIC:.....RESPONDENT**

**RULING**

**WILLIAM CHUMBA** applies under section 357 of the Criminal Procedure Code that pending the hearing of his appeal he be released on bail. His application is based on the grounds that he has appealed against sentence and that fairness requires that he be admitted to bail and further that this court do jealously protect the applicant's constitutional right to liberty. He adds that his appeal has overwhelming chances of appeal and he is ready to abide by any terms and conditions set by the court for his release on bail and he will not jump bail if released. One Jimmy Kemboi described as the putative father of the Applicant has sworn the affidavit in support of the application and states that the Applicant is ready to abide with reasonable terms set by the court and that he was out on bail during the hearing of the criminal charge against him.

The Applicant was charged in Eldoret Chief Magistrate's Criminal case No. 5306 of 2009 with the offence of committing an unnatural offence contrary to section 161 (e) of the Penal Code and was at the conclusion of the trial found guilty and convicted to serve five (5) years in jail. I have thoroughly perused the proceedings and judgment in the Chief Magistrate's case and I do not come to the conclusion that the appeal has overwhelming chances of success (not a high probability of success as stated, this is a criminal not a civil case). The issue of constitutional liberty does not arise in this case as the Appellant is serving a lawful sentence, having lost the constitutional presumption of innocence upon conviction. Additionally the conditions to be met for one to be admitted to bail pending appeal are now well settled and there is a multitude of authorities on the subject. Suffice to quote only one such case here: - **DOMINIC KARANJA –VS- REPUBLIC NAIROBI CRIMINAL APPLICATION NO.14 OF 1986** where the court of appeal quoting the case of **SOMO V REPUBLIC (1972) E.A.476** re-emphasized that the most important issue for consideration is that if the appeal has such overwhelming chances of success, there is no justification for depriving the Applicant of his liberty. The relevant but minor considerations would be whether there are exceptional or unusual circumstances. It was further held in the quoted case that the previous good character of the Applicant and the hardships, if any, facing his family were not exceptional or unusual facts. Not even does ill health per se constitute an exceptional circumstance as there are medical facilities for prisoners. A solemn assertion by an Applicant that he will not abscond if released, as is stated in the application under consideration, even where such solemn assertion is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal.

In the instant case learned counsel for the Republic Mr. Chirchir did not think that the appeal stands a chance of succeeding. That is the same finding this court comes to. For those reasons the application under consideration is found to be without merit and is accordingly dismissed.

**DATED AND DELIVERED AT ELDORET THIS 25<sup>TH</sup> DAY OF FEBRUARY, 2010**

**P.M.MWILU**  
**JUDGE**

**IN THE PRESENCE OF:-**

Paul Ekitela - Court Clerk

N/A for the Advocate for the Applicant

Kabaka holding brief for Mr. Chirchir for the state