



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**Criminal Appeal 165 of 2009**

**ARIF AHMED ALI HUSSEIN SHAH ..... APPELLANT**  
**VERSUS**  
**REPUBLIC ..... RESPONDENT**

**RULING**

The Applicant herein ARIF AHMED ALI HUSSEIN SHAH filed this Notice of Motion on 6<sup>th</sup> November 2009 seeking to be granted bail pending the hearing and determination of his appeal. The Applicant relied wholly on the grounds on the face of his application as well as annexed medical documents. Mr. Onserio learned State counsel gave oral submissions opposing the granting of bail to the Applicant whom he termed as “*high flight risk*”.

I have carefully considered this application and I have carefully perused the attached medical documents. I have no doubt that the Appellant is indeed unwell and is in need of continued treatment. However as pointed out by Mr. Onserio the Applicant is able to access treatment whilst in remand and indeed has been doing so. Mr. Onserio argues that the Applicant has several other cases pending and is therefore a high flight risk. The Applicant concedes in his reply that he does have one case pending before the Nairobi Law Courts. The fact that the Applicant has other cases does in my view make him a high flight risk.

All in all having considered all relevant factors I find that this is not a case suitable for bond pending appeal. The Applicant will remain in remand for the pendency of his appeal. However in recognition of the fact that the Applicant underwent major surgery in 2003 and is under medication I do hereby direct prison authorities to allow the Appellant to be seen and attended to by his personal physician.

Dated and Delivered at Mombasa this 23<sup>rd</sup> day of February 2010.

**M. ODERO**

**JUDGE**

**23/2/2010**