



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Criminal Appeal 177 (A) of 2009**

RAYMOND KIPYEGON BARMAO:.....APPELLANT

VERSUS

REPUBLIC:.....RESPONDENT

RULING

The Appellant was convicted of the offence of manslaughter and sentenced to serve a term of twenty (20) years imprisonment. He has now preferred an Appeal to this court on the grounds that the trial magistrate erred in law in convicting and sentencing the Appellant on an incurably defective charge, that the trial magistrate on his own motion amended the charge and did not call upon the accused to plead to the amended charge, that the sentence is manifestly excessive in the circumstances of the case and that provocation and remorsefulness of the Appellant were not considered. The Applicant has then taken out a Notice of Motion under sections 356 and 357 of the Criminal Procedure Code cap.75 Laws of Kenya and all other enabling provisions of the Law praying that he be admitted to bail and/or bond pending the hearing and determination of his appeal. That application is grounded on the basis that the appeal does not operate as a stay of the sentence and hence it is imperative that a stay be granted so as not to render the appeal nugatory. That the appeal has overwhelming chances of success and the Appellant is willing to deposit sufficient security. The other grounds are as in the appeal itself.

The supporting affidavit to the application is sworn by the advocate and he depones reiterating the grounds of Appeal as well as the grounds upon which the application is based as stated in the opening paragraphs of this Ruling.

The conditions to be met before an Appellant is admitted to bail pending appeal are well settled and they are that the appeal has overwhelming chances of success so that there would be no justification for depriving the Applicant of his liberty. And that there exists exceptional or unusual circumstances. Those are the guiding factors that I will follow in considering this application

I have perused the proceedings and judgment of the trial court. I find that the Applicant admitted having caused the death of the deceased and he did not advance the defence of provocation and he said nothing in mitigation so the issue of his being remorseful does not arise. That in a nutshell is the basis upon which conviction and sentence were arrived at. In the premises my evaluation of the case does not make out an Appeal with overwhelming chances of success and as there are no exceptional/unusual circumstances present in the case I am not persuaded that the orders sought should issue. The application is found to be unmeritorious and it is accordingly dismissed.

DATED SIGNED AND DELIVERED AT ELDORET THIS 29TH DAY OF APRIL 2010.

**P.M.MWILU
JUDGE**

IN THE PRESENCE OF:-

Andrew Omwenga – Court clerk

Mr. Chemwok – Advocate for Appellant/Applicant

Mr. Kabaka - State counsel

P.M.MWILU

JUDGE