



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**Criminal Appeal 64 of 2010**

**BENJAMIN KIPSORNO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

**BENJAMIN KIPSORNO KOMEN** was convicted in Kabarnet Principal Magistrate Criminal case no. 191 of 2009 of the offence of arson contrary to the Provisions of Section 332 (a) of the Penal Code. He was sentenced to serve 7 years imprisonment. Dissatisfied he has preferred an appeal and has also taken out a Notice of Motion under the provisions of section 356 of the Criminal Procedure Code cap. 75 of the Laws of Kenya seeking that he be released on bail pending the hearing and determination of that appeal. He raises the grounds that the appeal has overwhelming chances of success, that his defence at trial and the fact that he and the complainant were involved in a protracted land dispute were not considered, the record of the proceedings does not show the language used and that if he is not admitted to bail he could serve the entire sentence before his appeal is heard.

The law on bail pending appeal is well settled and it is that for one to be admitted to it the appeal must have overwhelming chances of success and there do exist unusual or exceptional circumstances.

I have perused the entire trial proceedings and I have considered what was done there. That record does not bear out submissions by counsel for the Applicant that the trial court was biased towards the Applicant and that the said protracted land dispute was not considered. On the contrary those two aspects are well covered in the judgment. My assessment of the case does not bring me to the conclusion that the appeal has overwhelming chances of success on conviction. An appellate court may, however, interfere with the sentence in the circumstances of this case if all the circumstances leading to the commission of the offence are considered. In that event then the Appellant may serve a fair length of the term of imprisonment before his appeal is heard. However, he was convicted on 29/04/2010 and it is unlikely that his appeal will not be heard in the next few months if quickly processed. In the end therefore I decline to exercise my judicial discretion in favour of the Applicant in the circumstances of this case. The application for bail pending appeal fails and it is accordingly dismissed.

**DATED SIGNED AND DELIVERED AT ELDORET THIS 16<sup>TH</sup> DAY OF JUNE 2010.**

**P.M.MWILU**  
**JUDGE**  
**IN THE PRESENCE OF:**

**Mr. Yego H/B for Lel** - Advocates for Applicant

**Kabaka H/B for Chirchir** - Advocate for State

**Andrew Omwenga** - Court Clerk

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