



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
Criminal Appeal 46 of 2010

DANIEL KIAMA MUSA.....1ST APPELLANT
HELEN WANJIRU KIAMA 2ND APPELLANT

VERSUS

REPUBLICRESPONDENT

R U L I N G

The Applicants herein were convicted by the SRM Kerugoya on a charge of cutting crops of cultivated farm produce contrary to Section 354 (a) of the penal code.

They were each sentenced to 5 years imprisonment. Being dissatisfied with the conviction and sentence, they have both preferred appeals before this court. Before the Appeal can be processed and heard, they have moved the court for bail pending Appeal.

There are only 2 grounds on the face of the application - to wit

- (a) *That appellants have extremely good grounds of Appeal***
- (b) *That the Appellants are in danger of serving a substantial part of the sentence before the Appeal is heard and determined and they will therefore suffer irreparable loss and damage.***

In the affidavit sworn by their advocate one **James Igati Mwai**, he adds another ground stating that the appellants complied with the bail terms before the trial court.

Learned Counsel for the state opposed the said application arguing that the mere fact that they may serve a substantial part of the sentence should not move the court to grant them bail. He further urged that the memorandum of Appeal does not form part of the affidavits. I agree with him on that point.

The memorandum of Appeal though filed along with the Chamber Summons has not been referred to. It does not therefore comprise of an annexure to the affidavit.

There is therefore no nexus between the Chamber Summons, the affidavit and the memorandum of appeal or even the proceedings.

That being the case, this court is actually not able to refer to the said grounds or proceedings. To that extent, these applications were seriously deficient.

If I may consider the grounds on the face of the Application however, the fact that an appellant has

