



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**Criminal Appeal 72 of 2010**

**FRANCIS NJOGU NYAGA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

The Notice of Motion dated 30.06.2010 is brought under Section 357 of the Criminal Procedure Code. The Applicant through Duncan Muyondi & Co. Advocates has moved this court for bail pending Appeal. He was convicted on 5 counts following a full trial and sentenced to between 2 years and 6 years imprisonment on each count. Since the sentences were ordered to run concurrently, he has to serve the 6 years imprisonment. He is in my view unlikely to serve the entire or a substantial part of that sentence before his Appeal is heard and determined. He relies on 7 grounds on the face of the application but basically his case is that his appeal has high chances of success as the evidence adduced was not sufficient to support a conviction.

The Application was strongly opposed by learned counsel for the state. He maintained the Appeal lacks merit and is unlikely to succeed. He therefore urged the court to dismiss the Application

I have considered the grounds of the application and the Applicant's Affidavit is support of the same. I have read through the proceedings. All I can say at this stage in order not to prejudice the Appeal is that the applicant has an arguable appeal but certainly not one with high chances of success. That being the only other ground he was relying on, his application must fail. The Application in my considered view lacks merit and the same is hereby dismissed.

**W. KARANJA  
JUDGE**

Delivered, dated and signed at Embu this 23rd day of September, 2010.

**In presence of :- Mr. Okwaro for Applicant & Ms. Matiru for  
the State.**