



**CRIMINAL**

Ø Bail pending appeal.

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL APPEAL CASE NO. 170 OF 2010**

**FRANKLINE MURANGIRI KAMWALA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The appellant has filed a Chamber Summons brought under section 357 of Criminal Procedure Code. He seeks that he be admitted on bail pending the hearing and the determination of this appeal. In his affidavit in support of that application, he stated that he was dissatisfied with the finding of the lower court and hence why he filed this appeal. He also stated that his appeal has overwhelming chances of success because he did not commit the crime for which he was charged. He finally stated that if he was not admitted on bail, he would suffer irreparable loss. The appellant was charged with the offence of attempted rape contrary to section 4 of the Sexual Offences Act No. 3 of 2006. He was also charged with the alternative offence of indecent act with an adult contrary to section 11A of the Sexual Offences Act. After trial, the learned magistrate convicted him of the substantive charge. He was on 10<sup>th</sup> September 2010 sentenced to 7 years imprisonment. The principles of granting bail in criminal cases pending appeal are well set out in the following cases. In the case of **Somo Vs. Republic** [1972] EA. 476 the court held that an applicant seeking bail pending appeal had to show his appeal has overwhelming chances of success and in which case he ought not to be kept in prison whilst awaiting the hearing of his appeal. The principles for granting bail pending appeal were set out in the case **Dominic Karanja Vs. Republic** [1986] KLR. The Court of Appeal stated thus:-

***“The most important issue was that if the appeal had such overwhelming chances of success, there was no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.”***

In the case of **Kaguma Vs. Republic** [2004] 1 EA the court held:-

***“For the applicant to obtain bail pending appeal, he had to demonstrate overwhelming chances of success. Minor relevant considerations would be whether there were exceptional or unusual circumstances. Previous good character of the applicant, hardship facing the wife and children, mere ill health, or even a solemn assertion that the applicant would not abscond were not exceptional circumstances.”***

I confirm that I have considered the evidence of the lower court. Having considered that evidence, I formed the opinion that the appellant's appeal does not have high chances of success. It is for that reason that the Chamber Summons dated 20<sup>th</sup> September 2010 is hereby dismissed.

Dated and delivered at Meru this 15<sup>th</sup> October 2010.

**MARY KASANGO**  
**JUDGE**