



1. Criminal Law
2. Criminal Procedure and Practice.
3. Oral Application for stay of proceeding pending appeal under **Section 379(5)** of the Criminal Procedure Code.
4. **Application opposed.**
 - a) **Section 379(5)** CPC deals with a completed appeal.
 - b) Under trial of public interest does not cover this case.
5. **Held.**
 - 1) That the **Section 379 (5) CPC** does not cover situation of stay of proceedings pending appeal.
 - 2) Application rejected.
6. **Case Law** — Nil.
7. **Advocate**
 R.K. Koech state counsel instructed by the Attorney General for the State – present
 J.K. Koskei advocate instructed by M/S Koskei & Tegekyon & co. advocates for the accused/appellant – present.

REPUBLIC PROSECUTION

VERSUS

SAMWEL KIPNG'ENO BIRIR ACCUSED

RULING

I: Oral application

1. That the state intends to appeal against this court’s orders in rejecting a witness under **Section 127** of the **Evidence Act** and accordingly now seeks orders of stay of proceedings pending appeal. This is the application made by the state.
2. The defendant objects to this application on grounds that **Section 379(5) CPC** that is being relied on, is not applicable.

II: Findings

3. The application for stay of proceedings is hereby rejected by the court.
4. This trial to accordingly proceed for hearing.

DATED this 16th day of December, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

R.K. Koech state counsel instructed by the Attorney General for the State – present

J.K. Koskei advocate instructed by M/S Koskei & Tegekyon & co. advocates for the accused/appellant – present.