



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**

**Criminal Case 142 of 2008**

**BATHLOMEW KABURU ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**RULING**

The applicant was tried and convicted for the offence of incitement to violence contrary to section 96(a) and (b) of the Penal Code. He was sentenced to eighteen months imprisonment. He has preferred this appeal to challenge both the conviction and sentence.

In the meantime by the instant application he is seeking to be admitted to bail pending appeal. The application is premised on the grounds that the appeal is arguable with reasonable chances of success. That the applicant may serve the sentence or substantial part of the sentence before the appeal is heard. That the applicant is sickly. In support of the application counsel for the applicant referred the court to the case of **Kaguma V. R.** (2004) E.A. 68.

Learned counsel for the respondent has not opposed the application submitting that indeed the evidence upon which the applicant's conviction was based was contradictory.

I have considered these submissions and the authority cited. It is trite that the main consideration in an application for bail pending appeal is whether the appeal has overwhelming chances of success. There are other peripheral consideration such as exceptional or unusual circumstances. Previous good character of the applicant, hardship facing his family, illness or even an assertion that the applicant will not abscond are not exceptional circumstances. See **Karanja V. R.** (1986) KLR 612.

I have perused the proceedings and the judgment rendered in the lower court, and without making a definite finding, I am satisfied that the appeal has an overwhelming chances of success.

For that reason it is ordered that the applicant be released on cash bail of Kshs. 10,000/= pending the hearing and determination of the appeal herein.

Dated and delivered at Meru this 26<sup>th</sup> day of September 2008.

**W. OUKO**

**JUDGE**