



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

**AT KERICHO**

**Misc. Cr. App. 14 of 2008**

**KENNETH KIPRONO NGENO .....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

**I: Background**

1. This is brought under a certificate of urgency by the 1<sup>st</sup> applicant original plaintiff that he be released on bail pending appeal.
2. The applicant has with two others been accordingly pleaded guilty to a charge on three counts for felling and cutting the forest contrary to **section 4(1)** of the Forest Act. Entering into the Government Forest without permission contrary to **section 52(1)** and being in possession of forest produce.
3. The three accused together with the applicant herein pleaded guilty to all the three counts and were accordingly convicted. They thereafter were sentenced to imprisonment term in default of not paying the fine.

**II: Application**

4. The applicant prays for bail pending appeal. The state opposes this and prays that the sentence is below minimum as required by law.

**III: Findings**

5. I have an opportunity of perusing the file from the lower court, the appeal file and proceedings therein.
6. The applicant is convinced of an excessive sentence imposed. In this case the applicant pleaded guilty to the charge. Where this occurs there is no right of appeal unless with the discretion of the court. It is not a complete bar to appeal.
7. Bail pending appeal has been held to be given only in specific and special amenities. The special amenities has not been said but the applicant has indeed not demonstrated that there is any special circumstances for his release on bail. There must be a proper medical doctor's report if that is what he

relies in his affidavit.

8. Unfortunately the affidavit was deponed to by the advocate himself and not the applicant.

In the case of **GIRDHAR DHANJI MASRAIM V REPUBLIC (1960) EA 320 (Shendan J)**

Bail pending appeal is only given in exceptional circumstance

In the case of **SIMON NYAGACHIKI KIVUTI V R (Ang'awa J) CA 126/08**.unreported also emphasized this.

9. I accordingly find this application have no merits. It is dismissed.

**DATED** this 17<sup>th</sup> day of December, 2008 at **KERICHO**.

**M.A. ANG'AWA**

**JUDGE**

**Advocate**

J.M. Motanya advocate instructed by M/S Motanya & Co. advocates

for the applicant – present

R.K. Koech – State Counsel instructed by the Attorney General

for the respondent - present