



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Criminal Appli 120 of 2007**

**ELVIS OMONDI OGUNA.....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

Before me is a Chamber Summons filed by Kanyangi & Company advocates and dated 15<sup>th</sup> February 2007 on behalf of the applicant ELVIS OMONDI OGUNA. It seeks for orders that –

1. The appellant/appellant be released on bond/bail pending the hearing and determination of this appeal.
2. Costs of the application be provided for.

The application has three grounds on the face of the Chamber summons. It is also supported by an affidavit sworn by the applicant on 15<sup>th</sup> February 2007. The grounds of the application are that the applicant is sick in prison and if he remains there his health shall continue to deteriorate. Secondly, that his appeal has overwhelming chances of success. Thirdly, that the ends of justice would be met if the application is granted.

At the hearing of the application Mr. Kanyangi appeared for the applicant while Ms Nyamosi appeared for the State. Mr. Kanyangi argued in support of the application while Ms Nyamosi opposed the application.

The main consideration to be taken by the court in an application for bail pending appeal, is whether indeed the appeal has overwhelming chances of success. See **DOMINIC KARANJA –vs- REPUBLIC [1986] KLR 612** At this stage I am not required to go into the merits of the appeal. My perusal of the record does not disclose any unusual circumstances that would make the appeal have overwhelming chances of success. The appeal appears to be an arguable appeal. The appellant/applicant who has already filed an appeal is challenging the unequivocality of the plea taken. In my view, the facts and circumstances of this case do not indicate any unusual or exceptional circumstances that can make me conclude that the appeal has overwhelming chances of appeal.

It has been argued or alleged for the applicant that he is ailing in prison. The sickness is not disclosed. I take it that many other people, who are in custody, fall sick while there. There is no unusual circumstance disclosed by the allegation of sickness.

Consequently, I find that this application has no merits and I have to dismiss the same. The application is hereby dismissed.

It is so ordered.

Dated and delivered at Nairobi this 30<sup>th</sup> day of May 2007

**George Dulu**

**Judge**