



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
CRIMINAL APPLICATION NO. 456 OF 1998**

**SIMON MWANGI KIRIKA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

The applicant was convicted of two counts of manslaughter c/s 202 as read with sec.205 of the Penal Code and sentenced to 3(three) years imprisonment on each count.

He was also convicted of 4 offences under Legal Notice No. 256 of 1963 relating to erection, occupation, inspection and construction of a building. On each of those charges he was fined kshs.2,000/- in default to serve three(3) months imprisonment

Being aggrieved by the said convictions and sentences, the applicant has filed an appeal. There is now before me an application under section 35791) of the Criminal Procedure Code for an order that the applicant be admitted to bail pending the hearing of he said appeal.

Bail pending appeal may only be granted if there are exceptional or unusual circumstances. \_ see Criminal Appeal No. 70 of 1983 Michael Otieno Ademba -v- Republic.

However, the most important ground is that the appeal has an overwhelming chance of being successful; in that case there is no justification for depriving the applicant of his freedom. See Somo -v- Republic (1972) E.A. 476.

Both learned counsel have addressed me on the issues involved. I have also gone through the record.

The applicant was the owner of a building that collapsed killing two people. There was sufficient evidence adduced by the prosecution that the collapse thereof was due to structural failure. The contributing factors were poor construction, poor concrete, poor foundation and overloading.

The applicant did not seek professional guidance in the construction of the subject building. Structural specification were not complied with. To say the least he was irresponsible. The bottomline is that the building was an illegal structure. The learned trial magistrate was right in his appreciation of the law and he was also right to conclude that the applicant committed these offences, in particular, manslaughter, on technical grounds. And this is where the real issue arises. Where does civil liability stop and criminal liability set in? The dividing line to use the word used by the learned trial magistrate is “technical”/

At the end of it all the applicant may not escape civil liability but with respect, I find it difficult to impose or rather read criminal liability in what took place. Thus conviction on the two courts of manslaughter, may be overturned but not on the other remaining counts.

The other point in relation to section 211 of the Criminal procedure Code does not arise. The learned trial magistrate, as far as the record can show complied with the same and no prejudice has been said to have befallen the applicant.

On the issue of sentence, it is true that the learned trial magistrate made extrenous comments which may have influenced the sentence. Without talking for the appellate court that shall hear the appeal, the said sentence on the first two counts is most likely to be disturbed.

In the end I find that the application succeeds. The applicant may be released on executing a bond of kshs. 500,000/- with one surety I the like sum.. He must attend the hearing of the appeal.

Orders accordingly.

Dated and delivered at Nairobi this 12th November, 1998

**A. MBOGHOLI MSAGHA**

**JUDGE**