**Kaguma v Republic**

[2004] 1 EA 68 (CAK)

**Division:** Court of Appeal of Kenya at Nairobi

**Date of ruling:** 26 April 2004

**Case Number:** 181/04

**Before:** Ochieng AJ

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**Sourced by:** LawAfrica

**Summarised by:** C Kanjama

*[1] Crime – Bigamy – Man contracting second marriage during subsistence of monogamous marriage –*

*Convicted of bigamy – Whether appeal against conviction has chances of success.*

*[2] Criminal procedure – Bail pending appeal – Who may swear affidavit in support of the application –*

*Conditions for grant of bail – Applicant convicted of bigamy and sentenced to three years’ imprisonment*

*– Whether appeal has chances of success.*

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**Editor’s Summary**

The Applicant celebrated a monogamous marriage with the complainant in 1960. During the subsistence

of the said marriage, he went through a ceremony of marriage with a second woman, with whom he was

cohabiting. The Applicant was convicted of bigamy and sentenced to three years’ imprisonment. He

appealed against both conviction and sentence.

The Applicant filed an application for bail pending appeal, which was supported by an affidavit by

“the second wife”. She alleged that the Applicant was about 75 years old, and that his health had rapidly

deteriorated in custody. She asserted that the Applicant’s appeal had high chances of success. In reply,

State Counsel argued that the appeal against conviction had virtually no chance of success, and that bail

should only be granted for exceptional and unusual reasons.

**Held** – The Applicant’s cohabitee was not his legal representative; however, her affidavit was properly

on record as she was merely putting evidence before the Court as a witness who was aware of the matters

in issue (*Mundia v Republic* [1986] KLR 623 followed).

For the Applicant to obtain bail pending appeal, he had to demonstrate overwhelming chances of

success. Minor relevant considerations would be whether there were exceptional or unusual

circumstances. Previous good character of the Applicant, hardship facing the wife and children, mere ill

health, or even a solemn assertion that the Applicant would not abscond, were not exceptional

circumstances (*Karanja v Republic* [1986] KLR 612 adopted). However, in this case, the Applicant’s ill

health and advanced age, coupled with the nature of the offence and the harshness of the sentence,

justified the granting of bail pending appeal.

Application granted.

*Per curiam:* An applicant’s counsel should identify and properly specify the provisions of law upon

which an application is brought. It does not serve the course of justice to make blanket reference to

statutes and “all other enabling provisions of law”.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Karanja v Republic* [1986] KLR 612 – **A**

*Lamba v Republic* [1958] EA 337

*Mundia v Republic* [1986] KLR 623 –