



1. Criminal Law
2. Criminal Procedure and Practice.
3. Oral Application for stay of proceeding pending appeal under **Section 379(5)** of the Criminal Procedure Code.
4. **Application opposed.**
  - a) **Section 379(5)** CPC deals with a completed appeal.
  - b) Under trial of public interest does not cover this case.

5. **Held.**

- 1) That the **Section 379 (5) CPC** does not cover situation of stay of proceedings pending appeal.
- 2) Application rejected.

6. **Case Law** – Nil.

7. **Advocate**

R.K. Koech state counsel instructed by the Attorney General for the State – present

J.K. Koskei advocate instructed by M/S Koskei & Tegekyon & co. advocates for the accused/appellant – present.

REPUBLIC ..... PROSECUTION

VERSUS

SAMWEL KIPNG'ENO BIRIR ..... ACCUSED

**RULING**

**I: Oral application**

1. That the state intends to appeal against this court's orders in rejecting a witness under **Section 127** of the **Evidence Act** and accordingly now seeks orders of stay of proceedings pending appeal. This is the application made by the state.
2. The defendant objects to this application on grounds that **Section 379(5) CPC** that is being relied on, is not applicable.

## **II: Findings**

3. The application for stay of proceedings is hereby rejected by the court.
4. This trial to accordingly proceed for hearing.

**DATED** this 16<sup>th</sup> day of December, 2009 at **KERICHO**

**M.A. ANG'AWA**

**JUDGE**

R.K. Koech state counsel instructed by the Attorney General for the State – present

J.K. Koskei advocate instructed by M/S Koskei & Tegekyon & co. advocates for the accused/appellant – present.



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