



Case Number:	Criminal Case 8 of 2008
Date Delivered:	16 Dec 2009
Case Class:	Criminal
Court:	High Court at Kericho
Case Action:	Ruling
Judge:	Mary Atieno Ang'awa
Citation:	REPUBLIC V SAMWEL KIPNG'ENO BIRIR [2009] eKLR
Advocates:	

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 16th 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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