



**ASM v Republic (Criminal Appeal E019 of 2022)
[2023] KEHC 72 (KLR) (18 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 72 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL APPEAL E019 OF 2022
FA OCHIENG, J
JANUARY 18, 2023**

BETWEEN

ASM APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, ASM, was convicted for the offence of Defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act*. He was then sentenced to serve 20 years imprisonment.
2. Having lodged a petition of appeal to challenge both the conviction and the sentence, the applicant also lodged an application for bond pending appeal. He believes that the appeal has high chances of success.
3. I have given due consideration to the application. In particular, I have taken note of the fact that prior to the trial of the applicant, the complainant had delivered a baby boy.
4. As the complainant had told her mother that it is the applicant who was the father of her baby; and when it was said that the complainant had not been sexually involved with any other man, the learned trial Magistrate ordered that DNA tests be conducted.
5. Arising from the order of the trial court, samples were taken from the complainant, the baby and the applicant. The samples were tested at the government chemist, Kisumu.
6. PW4, Polycarp Lutta Kweyu, was the head of the testing section at the government chemist, Kisumu. He produced the report from the government chemist, as an exhibit before the trial court.



In his testimony, PW4 said;

“On May 11, 2021 CPL Lucy Sein from Keroka submitted a court order requiring us to do testing for DNA to determine parentage of the following:-

- a. ASM (accused)
 - b. VB (complainant)
 - c. JB (baby)
7. I collected samples from the mouth in equal samples. I generated DNA samples: each individual has unique DNA profile. There's discrepancies on DNA. I came up with conclusion that the accused is excluded from being the biological father to B, who is otherwise V's child.”
 8. The witness emphasised that there could be no errors in the report which he adduced in evidence.
 9. And during cross-examination, PW4 reiterated that;
Alex is not the father to minor.”
 10. In the light of the explicit and categorical evidence produced by the expert, I am in agreement with the applicant, concerning the prospects of his appeal.
 11. In the circumstances, justice demands that the applicant be granted Bond pending the hearing and determination of his appeal. This decision is also informed by the fact that during his trial, the applicant was out on bond, and that he never failed to attend court whenever he was required to do so.

I order that the applicant be and is hereby granted bond of Kshs 200,000/=, with one surety of like sum.

DATED, SIGNED AND DELIVERED THIS 18TH DAY OF JANUARY, 2023.

FRED A. OCHIENG

JUDGE

I certify that this is a

true copy of the original

DEPUTY REGISTRAR

