



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NUMBER E030 OF 2021

CALISTUS RONOAPPELLANT

VERSUS

REPUBLIC..... ODP

RULING ON BAIL PENDING APPEAL

1. Before me is the Notice of Motion dated 29th October 2021 brought by Calistus Rono (the applicant). He comes under **Section 357 of the Criminal Procedure Code** seeking *inter alia*; That the applicant be granted bond pending appeal.
2. The application is supported by the applicant's affidavit sworn on 29th October 2021. The gist of the application is that an applicant was charged with **Defilement Contrary to Section 8(2) of the Sexual Offences Act** in **Molo Chief Magistrate's Sexual Offences 117 of 2018**. On 6th October 2021 he was convicted and sentenced to serve twenty (20) years imprisonment. Dissatisfied with the conviction and sentence he lodged an appeal and had annexed a copy of the Memorandum of Appeal.
3. Arguing the appeal on his behalf Mr. Simiyu submitted that he relied wholly on the applicant's Supporting Affidavit, further that the applicant was on bond in the lower court, to which he remained faithful, that his appeal had high chances of success.
4. That prior to conviction the applicant was a graduate in Nairobi and on probation at his place of employment. That complainant had agreed that she was not a virgin, and hence the issue of penetration; that there was an issue of the child who was conceived and whether there was need to conduct DNA. That applicant suffered from High Blood Pressure.
5. Ms Murunga for the state opposed the application. She submitted that according to the Bail and Bond Policy Guidelines the applicant is required to demonstrate an arguable appeal, with high chances of success. That he will have served a substantial part of his sentence before his appeal is heard, that appeals are heard expeditiously and there was no chance he would serve his twenty (20) year sentence before his appeal has been heard.
6. That the applicant has not demonstrated that his appeal has high chances of success, he has only annexed his Memo of Appeal, there was no way of knowing whether he had an arguable appeal. He was convicted by a competent court.
7. That the applicant's right to bond was compromised by the conviction, and he was required to demonstrate exceptional circumstances. That he had not annexed anything to show that he was acting and there was nothing to show that he had a job.
8. In response Mr. Simiyu submitted that the bond is a constitutional right, that state had not demonstrated it would suffer any prejudice, that the appeal would be preceded setting with regard to issue of baby conceived by complainant who was acting as an adult, that the matter involved case of minor involved in sex with several people then picking one and pinning this on him.
9. He urged the court to take into consideration the state of corona, and give the applicant the chance to build the nation.
10. The issue for determination is whether the application has merit.
11. The applicant has not demonstrated any exceptional circumstance in the 1st place. He was convicted and sentenced by a competent court and sentenced to lawful sentence. His Memorandum of Appeal raises issues on the key ingredient, of defilement, and going by the arguments by counsel, that the court failed to consider that the applicant has several sexual partners therefore penetration surely could not be proved. The fact of having many sexual partners for a minor is an exceptional circumstance, but it cannot be a defence for any of them who is caught and it is proved he had sexual intercourse with her, because he is the adult and ought to know better. Any adult who has sexual intercourse with a child, whether he is the 1st one or the 9th one, commits the offence of defilement. The character of the child may not

guarantee success of the appeal.

12. There is no evidence annexed that the applicant is ailing and in any event, he can access medical treatment through prison authorities. There is no chance that he will serve a substantive part of his sentence before the appeal is heard. This court has no backlog of criminal appeals.

13. It is therefore my finding that the application is not merited and the same is dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31ST DAY OF JANUARY, 2022.

MUMBUA T. MATHEKA

JUDGE

In the presence of:-

Court Assistant Edna

Mr. Simiyu for applicant

Ms Murunga for state