



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL APPEAL NO. E088 OF 2021

BETWEEN

REPUBLIC.....PROSECUTOR

VERSUS

LABAN WAMBUGU WARUGURU.....ACCUSED

As Consolidated With

CRIMINAL CASE NO. E089 OF 2021

WILLY KUNGU.....APPELLANT

VS.

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence of the Chief Magistrate's Court at Thika V. Kachuodho, SRM in Sexual Offences Case NO. 2024 of 2016 dated 12th August, 2021

RULING

1. **LABAN WAMBUGU WARUGURU alias PASTOR JOHN** and **WILLY KUNGU** were convicted on 12th August, 2021 before Thika Chief Magistrate's Court with three counts of indecent act with a child contrary to **Section 11(1)** of the sexual Offences Act. On conviction, they were sentenced to imprisonment of 10 years on each count, each sentence was ordered by the trial court to run concurrently.
2. They being aggrieved of both conviction and sentence appeal to this Court. The appellants filed Notice of Motion application dated 18th August, 2021 seeking bail pending the determination of their appeal.
3. The bail application was not opposed by the prosecution.
4. I have perused and considered the trial court's proceedings and judgment. Having done so, I find on prima facie basis that the appellants' appeal does not have overwhelming chances of success. It ought to be stated the appellants' application for bail is considered on different principals to those that the court will consider if the applicant was not convicted of an offence: See the case **MASRANI VS. R (1960) EA 321** where the court stated:-

“Different principles must apply after conviction. The accused person has then become a convicted person and the sentence starts to run from the date of his conviction.”

5. It is also useful to consider the holding in of the case of **SOMO V. R (1972) E.A. 476** as follows:-

“There is little if any point in granting the application if the appeal is not thought to have an overwhelming chance of being successful, at least to the extent that the sentence will be interfered with so that the applicant will be granted his liberty by the appeal court. I have used the word “overwhelming” deliberately for what I believe to be good reason. It seems to me that when these applications are considered it must never be forgotten that the presumption is that when the applicant was convicted, he

was properly convicted. That is why, where he is undergoing a custodial sentence, he must demonstrate, if he wishes to anticipate the result of his appeal and secure his liberty forthwith, that there are exceptional or unusual circumstances in the case. That is why, when he relies on the ground that his appeal will prove successful, he must show that there is overwhelming probability that it will succeed.”

6. I have noted that **Laban Wambugu Waruguru** says, that he is unwell. That fact alone cannot be a basis of granting bail pending appeal.
7. The appeals hereof were admitted for hearing on 1st November, 2021 and accordingly, the hearing of these appeals shall not be delayed.
8. Accordingly, the two applications by both appellants both dated 18th August, 2021 are declined. They are dismissed.

RULING DATED AND DELIVERED AT KIAMBU THIS 16TH DAY OF DECEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

COURT ASSISTANT : MAURICE

FOR DPP :- KATHAMBI/KASYOKA – PRESENT

FOR BOTH APPELLANTS : MR. SWAKA – PRESENT

1ST APPELLANT : LABAN WARUGURU – PRESENT

2ND APPELLANT :- WILLY KUNGU – PRESENT

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE