

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL APPEAL NO. 111 OF 2019

(From Original Conviction and Sentence in Criminal Case No. 2 of 2018

by the Principal Magistrate's Court at Vihiga)

WASHINGTON AMATALO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The appellant was convicted by the trial court at Vihiga of the offence of defilement of a minor of fourteen years and was sentenced to serve twenty (20) years imprisonment. He was dissatisfied with the conviction and sentence hence the instant appeal.
2. He has moved the court by a Motion dated 18th October 2019, principally seeking to be admitted to bail pending appeal on account of his being a candidate in the forthcoming Kenya certificate of Secondary School Examinations, which are due to commence on 2nd November 2019. The appellant filed written submissions to urge his case, and his counsel, Mr. Shifwoka, also addressed the court.
3. The respondent did not file any papers in opposition, but at the oral hearing of the application, Ms. Omondi, opposed the application. She also filed written submissions where she urged dismissal of the application.
4. Grounds upon which bail pending appeal are granted are well settled. Principally it will be dependent largely on the cogency of the grounds of appeal and the exercise of discretion by the court in the given circumstances. The broad considerations would be whether leave to appeal has been granted or whether appeal has been admitted, whether there is likelihood of success and whether, if the application is not granted, the appellant risks serving the entire sentence before the appeal is heard and determined. It must also be demonstrated that exceptional circumstances exist.
5. The principal matter for consideration herein is whether the appeal stands good chances of success. That can only be considered without getting into substantive matters that would amount to determining the appeal itself at this stage, a circumstance that would embarrass the Judge who would ultimately have to handle the appeal. I have considered the judgment of the trial court alongside the grounds of appeal and the submissions by counsel. I am not persuaded that there is anything glaringly amiss with the manner the trial was conducted and the evidence handled which would lead me, at this stage, to conclude that the appeal has overwhelming chances of success. The appeal is yet to be admitted and the original records of the trial court are yet to be availed. The sentence imposed is not a short one. There is no risk that the appellant will have served out the sentence by the time appeal is heard and determined. On the matter of unusual and exceptional circumstances, these should relate to the case, and not the circumstances of the appellant. The fact that he is due to sit a national examination soon is not by no means an unusual or exceptional circumstance about the case.
6. Whereas I sympathize with the appellant's plight, I do not find justification in it to warrant his being admitted to bail pending appeal. Arrangements can still be made for him to sit the national examinations while still at prison.
7. in the end the final orders that I shall make in the circumstances are:
 - (a) that the Motion dated 18th October 2019 is hereby dismissed; and
 - (b) that the prison authorities at Kodiaga GK Prison, or whichever the other prison or penal institution where the appellant could be serving his custodial sentence, shall facilitate him to sit all his Kenya National Secondary Education Examinations papers at Eluhobe Mixed Secondary School where he is registered as a candidate.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 31ST DAY OF OCTOBER 2019

W MUSYOKA

JUDGE