



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO. 6 OF 2018

PETER NJERU GATARI.....APPLICANT/APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. This is an application for bail pending appeal dated 10/03/2018. It is based on the grounds that the applicant was on bail during the pendency of the trial and that he attended court faithfully. It is also deponed that his appeal has overwhelming chances of success.
2. Further that he shall abide by all the conditions set by this court on release.
3. In the replying affidavit of the prosecution counsel Leah Mati, this application is opposed on grounds that the applicant has not demonstrated that his appeal has any chances of success. That no justifiable reasons have been given to justify granting the orders for bail.
4. Mr. Momanyi for the applicant filed submissions arguing that although bail is not a constitutional right at this stage, the prosecution has not demonstrated any compelling reasons why the appellant should not be released. He is yet to exhaust all the avenues of his constitutional right regarding criminal justice.
5. The counsel pointed out at some parts of the witnesses' evidence and submitted that the complainant had gone to the home of the accused voluntarily. He cited a Malindi HCCR No. 32 of 2015 in which the judge dealt with facts similar to those of this appeal.
6. The gist of the argument is that the victim portrayed herself as an adult and should be taken to be so.
7. The applicant further submitted that the child told him she was 18 years although her age in court was said to be 16 years. He reasonably believed that the complainant had told him the truth.
8. Based on the summary of the facts or evidence sampled, the applicant is of the opinion that his case has high chance of success.
9. From the record, the applicant was charged and convicted by Siakago Resident Magistrate of the offence of defilement contrary to Section 8(4) of the Sexual Offences Act. He was sentenced to serve 15 years' imprisonment.
10. I have perused the affidavit and the submissions of the respondent and do not find it vehemently in opposition of this application. I have also perused the judgment and noted that the applicant had raised the defence under Section 8(5) of the Act that he reasonably believed that the complainant was over 18 years.
11. It is my considered view that the appeal is arguable and ought to be given a chance to be heard with the applicant not in confinement.
12. I therefore find this application merited and allow it in the following terms:
 - a) *That the applicant/appellant may be released on bond of Kshs.300,000/= with one surety.*
 - b) *That he will attend bi-monthly mentions pending hearing and determination of the appeal.*
13. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 29TH DAY OF OCTOBER, 2018.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Muriuki for Momanyi for Applicant