



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NANYUKI**

**MISC. CRIMINAL APPEAL CASE NO. 20 OF 2017**

**JUDE WAITHAKA WAKANYI .....APPELLANT/APPLICANT**

**versus**

**REPUBLIC .....RESPONDENT**

**RULING**

1. The applicant **JUDE WAITHAKA WAKANYI**, was convicted before Nanyuki Chief Magistrates Court with **the offence of defilement Contrary to Section 8(1) the Sexual Offences Act, Act No. 3 of 2006 on 3<sup>rd</sup> March 2017**. He was sentenced to serve 20 years imprisonment. He has filed his appeal, being High Court Criminal **Appeal No. 32 of 2017**, before this court and Pending the hearing and determination of that appeal he was sought under Misc. Criminal Application No. 20 of 2017 that he be released on bail.

2. I do order that Criminal Appeal No. 32 of 2017 move together with Misc. Criminal Application No. 20 of 2017 henceforth.

3. Where-as the Constitution under Article 49 (h) provides an arrested person has a right to be granted bail, it is not the same as who has been convicted. This was well stated in the case.

**MUTUA V R [1988] KLR 497** Where the Court of Appeal stated:

***“It must be remembered that an applicant for bail has been convicted by a properly constituted court and is undergoing punishment because of that conviction which stands until it is set aside on appeal. It is not wise or to set the applicant at liberty either from the point of view of his welfare or of the state unless there is a real reason why the court should do so.”***

4. **Section 357 (1)** of the Criminal Procedure Code states;

***“After the entering of an appeal by a person entitled to appeal, the High Court, or the subordinate Court which convicted or sentenced that person, may order that he be released on bail with or without sureties, or if that person is not released on bail, shall at his request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal.”***

This court, therefore, has power to grant the applicant bail pending appeal.

5. The application for bail was not opposed by Senior Principal Prosecution’s Counsel particularly because the applicant who was on bail pending trial attended his trial without fail.

6. I have considered the application and I am satisfied on a balance of probability that the applicant's has shown his appeal has high chances of success. The applicant also has presented to this court a letter dated 8<sup>th</sup> March 2017 of the Chief of Nturukuma Location in which letter the chief confirmed the applicant resides within his jurisdiction. The applicant is also a member of Christ the King Catholic church which is proved by a letter of Catechist of the said Church.

7. On the whole the application is merited. Accordingly the following orders are hereby granted.

**a) JUDE WAITHAKA WAKANYI is hereby ordered to deposit his passport at the court, if he has one, pending hearing and determination of Criminal Appeal No. 32 of 2017.**

**b) Bail is hereby granted to JUDE WAITHAKA WAKANYI, pending the hearing and determination of his Criminal Appeal No. 32 of 2017 on the said applicant executing a bond of Ksh. 1 million, with two sureties of Ksh. 400,000 each.**

**c) At the reading of this Ruling a mention date shall be given in Criminal Appeal No. 32 of 2017.**

**DATED AND DELIVERED THIS 29<sup>th</sup> DAY OF MARCH 2017.**

**MARY KASANGO**

**JUDGE**

**CORAM:**

Before Justice Mary Kasango

Court Assistant: Ndungu

Accused: Jude waithaka Wakanyi .....

For accused: .....

For the State: .....

**COURT**

Ruling delivered in open court.

**MARY KASANGO**

**JUDGE**