



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CRIMINAL APPEAL NO 15 OF 2017

JOHN NJIRU NJUEAPPLICANT/APPELANT

VERSUS

REPUBLICRESPONDENT

RULING

1. In his motion of motion dated 25th of February 2017 the applicant seeks for orders of bail pending appeal. He was convicted of the offence of defilement contrary to Section 8(1) as read with 8(2) of the Sexual Offences Act No. 3 of 2006 and that of committing an indecent act with a child contrary to Section 11 of the same Act and sentenced to 80 years imprisonment by Embu Senior Resident Magistrate.
2. The grounds supporting the application are that his appeal has overwhelming chances of success and that he faithfully attended trial in the lower court while on bond of a Kshs.100,000/- with one surety. He further states that he is the sole bread winner of his family and that he is an elderly person of poor health requiring medical care and attention. Further that he is ready to abide by any conditions given by the court.
3. The respondent in opposition to the application states that the conviction was safe and that it is incorrect to say that the evidence was inconsistent and uncorroborated. It is argued that the appeal has no overwhelming chances of success. The fact that the applicant faithfully attended court during the trial is not a condition that justifies granting bail pending appeal. The applicant has not proved that there are any exceptional or unusual circumstances favoring his application. The previous good character of the applicant and his family hardships do not justify release on bail pending appeal.
4. The respondent relied on the case of ***MUNJIA MICHUBU VS REPUBLIC Criminal Appeal No. 100 of 2013*** where it was held that for bail pending appeal to be granted, the applicant must show that his appeal has overwhelming chances of success or that there exists exceptional circumstances on the part of the appellant.
5. The applicant has deponed in his affidavit that he is an old man of poor health and that requires care and medical attention. He did not annex any medical report to support this ground. This court is aware that the prison is possessed of adequate medical facilities for prisoners under their care. The condition which was not specified may also be conveniently taken care of in prison.
6. The fact that the applicant is the sole bread winner of his family and his purported medical condition do not amount to exceptional or unusual circumstances.
7. An application for bail pending appeal is based on the fact that the applicant has already been convicted by a competent court. In his appeal he bears the onerous task of showing that the conviction was unsafe

or that the sentence was excessive, harsh or unlawful. These facts distinguish an application of this nature from that of an accused facing trial who has a constitutional right of being presumed innocent until proven guilty.

8. The nature of this application therefore calls for exercise of extra caution in granting bail. An accused person, subject to the discretion of the court has a constitutional right to be released on bail under Article 49 of the Constitution unlike a convicted person. It is not so with a convicted person.

9. In determining whether the appeal has overwhelming chances of success which is a requirement herein, the court must consider the petition of appeal *vis a vis* the evidence and the judgment of the trial court. If the court is satisfied that the appeal has overwhelming chances of success, there would be no justification in depriving the applicant of his freedom.

10. I have perused the judgment of the court and the petition of appeal and I am of the considered opinion that the appeal is arguable but cannot be said to have overwhelming chances of success.

11. The discretion of the court in granting bail must be exercised judicially. The applicant in this case was convicted of two offences which are of serious nature and sentenced to 80 years imprisonment.

12. It is my considered opinion that the applicant has failed to satisfy the court that his appeal has overwhelming chances of success or that there exists exceptional or unusual factors on his part. I find the application unmerited and dismiss it accordingly.

DELIVERED, DATED AND SIGNED AT EMBU THIS 12TH DAY OF APRIL 2017.

F. MUCHEMI

JUDGE

In the presence of:-

Mr. Guantai for Applicant

Ms. Manyal for Respondent

Applicant present