

REPUBLIC OF KENYA

IN THE THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL APPEAL NO.13 OF 2016

J O C.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. This is an application by the appellant praying that he be released on bond pending the hearing and determination of his appeal. He had been charged with the offences of Defilement contrary to Section 8(1)(4) of the Sexual Offence Act and Unnatural Offence contrary to Section 162(A) of the Penal Code and promoting a Sexual offence with a child contrary to Section 12(B) of the Sexual Offences Act. He was convicted and sentenced to 15 years imprisonment.
2. The gist of the application is that the applicant has a strong and arguable appeal and that the appellant is HIV positive and therefore he needs specialist medication and diet.
3. By a replying affidavit of Nyangara Osoro the State (Respondent) has opposed the application stating that the applicant does not have a good and an arguable appeal and that even if the applicant is HIV positive the prison is capable of escorting him to receive medical attention. That the complainant was his daughter and his son was the state witness.
4. It is not for this court to determine at this stage whether or not the appeal is arguable. That decision shall be done during the substantive hearing of the appeal.
5. From the sworn affidavit of **Charles Lutta Kasamani** on behalf of the applicant I am not satisfied that there are sufficient reasons to allow the application. First of all the applicant was sentenced to 15 years imprisonment. This period started running I suppose from April 2016. Clearly the appeal can still be concluded within a reasonably shorter period. From the records it appears that the judgment has already been typed, meaning that the rest of the proceedings can be processed.
6. Secondly I do not find the reasons for the HIV status of the applicant plausible. The court takes judicial notice of the fact that there are other HIV positive people in prison and the prison authorities are capable of dealing with them. In any case should the applicant require any specialist treatment then he can make such an application.
7. The court has further perused the available record and taken cognisance of the close family relationship between the applicant and the complainant and it is only fair and just that the applicant remain in custody.
8. In the premises the best alternative for the applicant is to fast track the appeal process. The application is otherwise disallowed.

Dated. Signed and delivered this 26th day of May 2016.

H. K. CHEMITEI

J U D G E