



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CRIMINAL APPEAL NO. 34 OF 2015
VINCENT KIPLANGAT ROTICH.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

RULING

By way of a Notice of Motion application dated the 21st day of March, 2016 expressed to be brought under Section 23 of the Criminal Procedure Code and Article 49 (1) (h) of the Constitution, the applicant herein prays to be admitted on bond pending appeal.

The grounds are that he has preferred an appeal which has overwhelming chances of success and that if the orders sought are not granted the appeal will be rendered nugatory.

Further, that the appeal may take too long to be disposed. This application is opposed on the grounds that its premised on Article 49 (1) (h) of the Constitution which provides for the rights of an accused person whereas the applicant is already a convict.

It is further contended that the application for bond pending appeal ought to be premised under case law.

The appellant in this appeal was convicted and sentenced to fifteen (15) years imprisonment for the offence of gang defilement contrary to Section 10 of the Sexual Offences Act No.3 of 2006 on 4th August, 2015.

Article 49 (1) (h) of the Constitution provides for the rights of an arrested person. The appellant was arrested, tried and convicted.

The principles of underpinning bail pending appeal are found in case law.

The court of appeal in the case of **Dominic Karanja V. Republic (1986) KLR** page 612 held;

1. The most important issue was that if the appeal had such overwhelming chances of success, there was no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.

2. The previous good character of the applicant and the hardships if any facing his family were not exceptional or unusual factors. Ill health per se would not constitute an exceptional circumstance where there existed medical facilities for prisoners.

3. A solemn assertion by an applicant that he will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal.

I have duly perused the record of proceeding and I am not satisfied that the appeal has overwhelming chances of success. The appellant was sentenced to fifteen (15) years imprisonment in the year 2015 and there is no likelihood that he will serve a substantial part of the sentence before his appeal is heard and determined. The application for bond pending appeal has no merit and its dismissed.

The appeal to be fast-tracked.

DELIVERED, SIGNED AND DATED THIS 30TH DAY OF NOVEMBER, 2016.

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M. MUYA

JUDGE

In the presence of;

1. Learned Prosecutor M/s Mwangi for the State
2. Learned Counsel for the Defence- Mr. Maengwe
3. Gladys - court assistant