



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**CRIMINAL APPEAL NO. 47 OF 2014**

**GEOFFREY KIPRONO KOECH.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an Appeal against the Conviction and Sentence by the Honourable E.M. Ayuka, Resident Magistrate at Kericho in Sexual Offence Case No. 35 of 2013 on 8.8.2014)*

**R U L I N G**

1. This application dated **30<sup>th</sup> October, 2014** has been brought under **Section 357** of the **Criminal Procedure Rules** and **Article 49 (1(h))** of the **Constitution**. The applicant seeks an order releasing him on bail pending the hearing of the appeal filed herein.
2. He has listed the following as the grounds of supporting the application;
  - a. *That the appellant has been sentenced to 15 years imprisonment.*
  - b. *That the appellant being dissatisfied with conviction and sentence has lodged an appeal in this High court at Kericho.*
  - c. *That given the time it will take to hear the appeal and nature of the sentence if successful the appeal will be rendered nugatory.*
  - d. *That the said appeal has overwhelming chances of success.*

He has also filed an affidavit in support.

1. When the application came for hearing **Mr. Bii** submitted on the grounds stated above. He pointed out that the evidence before the lower court was contradictory. And that the victims age was not proved. He referred the court to the case of **JOHN FUNDI & ANOR. - EMBU HCCRA.NO. 26/13.**
2. In response **Mr. Mutai** the learned state counsel opposed the application saying the two principles to be considered in such an application were two namely;

- i. *Appeal should have high chances of success.*
- ii. *The applicant must demonstrate that there are special circumstances to warrant the exercise of the court's discretion in his favour.*

1. It was his submission that none of the two principles had been demonstrated by the appellant. He further stated that owing to the fifteen (15) years jail term the appellant was serving he was a flight risk.
2. It must be appreciated that bail pending appeal is not a constitutional right as bail pending trial. See the case of **Mutua V R [1988] KLR 497** where the Court of Appeal stated thus:

***“ 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.***

1. It is for that reason that a different test from that applied in bail pending trial is applied in bail pending appeal. The test is whether:
  - i. The appeal has overwhelming chances of success. See **Somo V R [1972] E.A 476, Mutua V R [1988] KLR 497; Ongondo & 2 others V R [1993] KLR 567.**
  - ii. There are exceptional or unusual circumstances to warrant the court's exercise of its discretion. See. **Raghibir Singh Lamba V R [1958] E.A 337; Somo V R (supra.); Mutua V R (supra.)**
  - iii. There is a high probability of the sentence being served before the appeal is heard. See **Chimabhai V R [1971] E.A 343.**
1. The appellant/applicant was charged and convicted of the offence of defilement of a 16 year old girl. The prosecution called four(4) witnesses. PW1 is the victim and she narrated what happened. She said she had known the applicant by appearance and identified him before arrest was effected. PW2 (*mother to PW1*) produced PW1's birth certificate to confirm age. PW3 a clinical officer confirmed that PW1 had been sexually penetrated. PW4 was the investigating officer.
2. **Mr. Bii** submitted that age had not been proved and relied on the case of **John Fundi** (supra.) to prove his point. The facts on the issue of proof of age in the **Fundi** case are quite different from the present case. I would not wish to analyze the evidence lest I find myself dealing with the appeal. But I would say the chances of success would not in the circumstances be said to be overwhelming as is required by the law.
3. In the case of **Raghibir Singh Lamba V R** (supra.) the court was categorical that “*neither the complexity of the case nor the good character of the applicant nor the alleged hardship to his dependants justified the grant of bail*” In the circumstances of this case, I find no exceptional or unusual circumstances raised to warrant the bail application. All that the applicant is saying in his affidavit is that he is the only bread winner in the family and his siblings depend on him. This is not sufficient ground for the court to grant the bail applied for.
4. Finally this appeal has already been admitted for hearing and the record prepared. The office of the Director of Public Prosecution has also been served. There will therefore be no delay in hearing the appeal unless the delay is caused by the appellant himself.
5. I therefore find the application to lack in merit and I dismiss it.

**Dated, signed and delivered this 22<sup>nd</sup> day of January, 2015**

**H.I. ONG'UDI**

**JUDGE**

**In the presence of ;**

Mr. Mutai for State

M/s V.K.Bii for Appellant

Rotich – Court Assistant

Appellant- Present in person

Interpretation – English/Kipsigis