

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO. 70 OF 2014

DOMINIC ORENDO TINEGA.....APPELLANT

VERSUS

STATE.....RESPONDENT

RULING

1. This application is dated 10th December, 2014, together with supporting affidavit of the same date, together with some annexures attached thereto. The essence of the application is for the release of the applicant pending the hearing and determination of the appeal.
2. The appellant, Dominic Orendo Tinega was charged under Section 15(f)(9) of the Sexual offences act, no.3 of 2006. It is alleged that between 25th and 30th September, 2014 at [Particulars Withheld] sublocation in Masaba South District within Kisii County knowingly leased a house that was used for the purpose of the commissioning of defilement against R N a child aged 17 years by Wilfred Okari Simanyo. The appellant was convicted and accordingly sentenced to 10 years imprisonment, the conviction and the sentence that is he has appealed against. The trial was at Keroka Law courts.
3. Article 49(1)(h) an arrested person has a right to be released on bond or bail, on reasonable conditions, pending a charge or a trial, unless there are compelling reasons not to be released.
4. It is incumbent upon the state to respond to this application for bond pending appeal by filing compelling reasons, if any, to deny bond/bail.
5. The pre-bail assessment report is absent. The court has to balance the issues after listening to both sides, the accused or the state. In the absence of the same the court has no alternative but to dismiss the application pending obtaining the state response and/or the filing of the pre-bail assessment report.
6. The court, in the meantime, directs the Deputy Registrar to cause the pre-bail assessment report be promptly made and filed accordingly.
7. The court will make a considered ruling after the two documents are filed.
8. It is so ordered.

Ruling dated and delivered at KISII this 6th day of January, 2015.

C.B. NAGILLAH,

JUDGE.

In the presence of:-

Ondari holding brief for Sagwe for the applicant

Clare for the respondent

Edwin Mongare Court Clerk.