



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CRIMINAL APPEAL NO. 299 OF 2013**

***(From Original Conviction And Sentence In Criminal Case No. 559 Of 2011 Of The Senior Principal Magistrate's Court At Narok, C. A. Nyakundi, P. M.)***

**CORNELIUS KIBET KIRUI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Appellant Cornelius Kibet Kirui was charged and convicted of the offence of defilement contrary to Section 8(1)(2) of the Sexual Offences Act No. 3 of 2006, and convicted to serve 15 years imprisonment. He preferred an appeal against both conviction and sentence. On the 23<sup>rd</sup> March 2015, he filed an application under the provisions of Section 356 and 357 of the Criminal Procedure Code and Article 49 of the Constitution seeking to be released on bail/bond pending the hearing and determination of the appeal.

2. The application came up for hearing on the 23<sup>rd</sup> March 2015 when the State requested for time to consider the same. On the 26<sup>th</sup> March 2015, the State submitted that the State has no objection to the application and that the appeal as filed has high chances of success.

3. In his supporting affidavit for the bail application, the appellant, a young man who was in form four in secondary school when he was arrested and charged with the offence of defiling his fellow school mate then in form two states that his appeal has very high chances of success and that he wishes to go back to school and that his health has deteriorated as he suffers from ulcers and depression. He states that he will comply with all terms as the court may impose on him if granted bail.

4. Bail is a constitutional right under Article 49(1)(h) of the Constitution though not absolute. Upon conviction and sentence the right to bail is purely on the courts discretion which ought to be informed on various circumstances and principles that the courts have laid down, and in particular in the case of **SOMO -VS- R (1972) EALR**, among them the following:

- (1) *whether there are exceptional or unusual circumstances*
- (2) *whether the appeal has overwhelming chance of success*
- (3) *whether the appellant is of good character and whether the appeal has been admitted for hearing and*

(4) *that the appeal did not involve personal violence*

(5) *and whether the sentence would tempt the appellant to flee from the jurisdiction of the court.*

5. I have considered the grounds stated in the application and the State's submission that it is not opposed to the application, and that the appeal has high chances of success. I have considered the proceedings before the trial court without going into detail of the merits of the appeal. I find that there are arguable grounds that may lead to a success of the appeal.

6. Guided by the principles laid down in the case of **Somo -vs- R (supra)** and **Harish Jetha -vs- R Criminal Appeal No. 936 of 1968**, I shall exercise my discretion allow the application, and release the appellant on bail upon the following terms:

(1) *that he shall sign a personal bond of Kshs. 250,000/= with one surety of similar amount.*

(2) *that during the pendency of the appeal, he shall attend court once every month for mention.*

(3) *that he shall undertake to attend court whenever required to do so.*

(4) *that failure to abide with any of the above conditions without lawful and excusable reason shall lead to an automatic cancellation of the bail.*

(5) *Mention on the 24<sup>th</sup> April 2015.*

It is so ordered.

**Dated, signed and delivered at Nakuru this 27<sup>th</sup> day of March 2015**

**JANET MULWA**

**JUDGE**

**In the presence of:**

Morintant for the Appellant

Rugut holding brief Chirchir for Respondent

Omondi – Court clerk