



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO. 321 OF 2015

WILFRED MAINA MWANGI.....APPELLANT/APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant herein prays to be admitted to bail pending the hearing and determination of his appeal. He was convicted of the offence of committing an indecent act with a child contrary to **Section 11(1) of the Sexual Offences Act No. 3 of 2006** and given the minimum sentence for the offence. His application was brought by way of Chamber Summons dated 8th September, 2015 brought under **Section 357 of the Criminal Procedure Code Cap 75 Laws of Kenya**. His grounds for application are that;

1. The appeal has overwhelming chances of success.
2. The applicant will abide by the terms of bail, if the same is granted.
3. Unless bail is granted, the appeal will be rendered nugatory as the Applicant will have served a substantial part of the sentence by the time the appeal is heard.
4. The Applicant had been on cash bail of Ksh. 20,000/= in the lower court.
5. The Applicant's fixed place of abode is known and he is not at flight risk.

The application is supported by the Applicant's affidavit sworn on 8th September, 2015 in which he reiterates the grounds upon which the application is brought. On his submissions, his advocate, Mr. Wandala relied on the supporting affidavit.

The application is opposed by counsel for the Respondent. His submission is that the evidence was overwhelming against the Applicant and the appeal has no chance of success.

I have also had the opportunity to read through the proceedings. The applicant was convicted for committing an indecent act with a child contrary to **Section 11(1) of the Sexual Offences Act No.3 of 2006**. Although I am minded that it is the duty of the appellate court to hear and determine the outcome of the appeal, it is not prejudicial to observe that the evidence on record was so strong for the prosecution's case. I therefore find myself not convinced that the applicant's appeal has a high chance of success.

The principles to be considered in granting bail pending appeal were laid down in the case of **Dominic Karanja Vs Republic (1986) KLR 612**, in which the Court of Appeal held, inter alia that;

- a. **The most important issue was that if the appeal had such overwhelming chances of success.**

- There is no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances**
- b. The previous good character of the applicant and the hardships, if any, facing his family were not exceptional or unusual factors....**
 - c. 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.**

As was enunciated in the above case law, the grounds mitigated by the Applicant do not warrant the grant of the orders sought. Accordingly, the application is hereby dismissed with no orders as to costs.

DATED and DELIVERED at NAIROBI this 12th day of November, 2015.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

- 1. M/s Musyoka h/b for Mr. Wandala for the Applicant*
- 2. M/s Wario for the Respondent*