

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO. 269 OF 2013

PATRICK KIMANI GACHATHI.....APPELLANT/APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

The applicant was charged in the magistrate's court at Kangema with the two counts of defilement contrary to section 8(1) (3) of the Sexual Offences Act No. 3 of 2006. In the alternative to the two counts, the appellant was charged with the offence of indecent act with a child contrary to section 11(1) of the Sexual Offences Act No. 3 of 2006. On 20th February, 2011, the court found the applicant guilty on both counts and sentenced him to serve twenty (20) years imprisonment for each of those two counts; the sentences meted out were run concurrently.

Being dissatisfied with the conviction and the sentences, the appellant appealed to this court seeking to have the convictions quashed and the sentences set aside. In the meantime, by an application dated 20th March, 2013 the appellant has sought to be admitted to bail pending the hearing and determination of his appeal.

The grounds upon which the applicant has based his application are that the appellant is a young farmer who stands to suffer irreparable loss unless he is admitted to bail; that he is able to raise security for bond and will comply with any terms imposed by this court if bail is granted; that he is not a flight risk and will attend court sessions whenever required; and that his appeal has overwhelming chances of success. The application was supported by the affidavit sworn by the applicant himself on 18th April, 2013.

On 3rd December, 2013, when the appellant's application came up for hearing, Mr Magiria for the applicant only told the court that the applicant is not a flight risk and therefore ought to be admitted to bail. On his part Mr Njeru for the state opposed the motion and argued that the applicant has not demonstrated that his appeal has high chances of success or that there exists exceptional circumstances which would justify the appellant being released on bail pending the determination of his appeal.

In an application such as this it is incumbent upon the applicant to demonstrate that the appeal has such chances of success that if the appellant is not released on bail, the appeal would be rendered nugatory to the extent that he will have either served the entire term of the sentence or a substantial part of it. The applicant must for example demonstrate, in this regard, that the appeal raises some substantial point of law whose determination is likely to be ruled in favour of the applicant. It has been held that where there is such a demonstration, the court will, in all certainty release the appellant on bail for it will not serve the interests of justice to keep him incarcerated in jail before his appeal is determined.

In the Court of Appeal decision of Dominic Karanja versus Republic (1986) KLR at page 612, it was held that where an appeal has overwhelming chances of success, there was no justification for depriving the applicant of his liberty.

Again in the Court of Appeal decision of Jivraj Shah versus Republic (1986) KLR 605, the court

was also of the view that if it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be urged and that the sentence or substantial part of it will have been served by the time the appeal is heard, then bail should be granted.

The appellant in this case never made any effort to convince the court that his appeal has overwhelming chances of success. No single argument was raised in this regard. Neither was it ever suggested in the course of the applicant's counsel's submissions that, in the words the court of appeal in *Jivraj Shah versus Republic* (supra), the appeal raises a substantial point of law whose determination will probably will be ruled in favour of the applicant.

Counsel for the state referred to exceptional circumstances; such circumstances have not been shown to exist in this case. Though exceptional circumstances are peculiar to particular cases, I doubt the fact the appellant is a youthful farmer who, as his counsel argued, will contribute to the economic development of this country would constitute what can properly be regarded as exceptional circumstances.

In the final analysis I do not find any merit in the appellant's motion dated 18th April, 2013. It is therefore dismissed.

Dated, signed and delivered in open court this 20th January, 2014

Ngaah Jairus

JUDGE