



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 43 OF 2013

FELIX TUTARA LILA APPELLANT

VERSUS

REPUBLIC

(Being an appeal from the conviction and sentence of Hon. S.O. Temu Ag. Principal Magistrate delivered on 5/4/2013 in Kajiado Principal Magistrate Criminal Case No. 1352 of 2011)

(Before Hon. B. Thurairaja J)

RULING

1. The application dated 26/4/13 seeks orders that:-
 - a. "Spent.
 - b. **THAT the Applicant be released to bail or bond pending the hearing and determination of High Court Criminal Appeal No. 43 of 2013 lodged herein on the 22nd day of April 2013.**
 - c. **THAT alternatively there be a stay of execution of the judgment and sentence passed in Kajiado Senior Principal's Criminal Case No. 1352 of 2011 pending hearing and determination of High Court Criminal Appeal No. 43 of 2013 lodged herein on the 22nd day of April 2013.**
 - d. **THAT the Applicant be at liberty to apply for such further or other orders and/or directions as this Honourable court may deem fit and just to grant and the honourable court make such further or other orders it deems appropriate in the circumstances."**
2. The background to the application is that on 5/4/2013 the Applicant, **Felix Turara Lila** was convicted for the offence of defilement under **section 8 (1)** as read with **8 (2)** of the **Sexual Offences Act No. 3 of 2006** and sentenced to 15 years imprisonment. The particulars of the offence were that on the diverse dates during the month of July, 2010 at **Isinya township in Isinya District, Kajiado County** did cause his penis to penetrate the vagina of **L S** a child aged 17 years in violation of **section 8 (2)** of the **Sexual Offences Act No. 3 of 2006**.
3. The Applicant was aggrieved by both the conviction and sentence and appealed to this court.
4. The application for bail is supported by the affidavit sworn by the Applicant on 12/4/2013. It is contended that the appeal has overwhelming chances of success as the Birth Certificate produced

in court by the District/Assistant Registrar of Persons indicated that the complainant was over 18 years at the material time. That the appeal will be rendered nugatory if the Applicant is not granted bail. The Applicant is ready to provide security and abide by the terms of bond that the court may impose.

5. The application was canvassed by way of written submissions which I have duly considered.
6. As stated by the Court of Appeal in **Dominic Karanja –vs- Republic 1986 KLR:-**

“The most important consideration is if the appeal has overwhelming chances of success, there was no justification for depriving the Applicant of his liberty. The other consideration is if there is existence of exceptional and unusual circumstances.”

7. I would also add that the court has to put into consideration the added fact that, having been convicted, the Appellant would most likely have an incentive to abscond if released on bail.
8. Having carefully considered the application and having perused the proceedings and judgment of the lower court, I am not convinced at this stage that the appeal has overwhelming chances of success. This court has however not yet had the benefit of hearing submissions on the actual appeal.
9. No unusual circumstances have been shown to exist upon which this appellate court can conclude that it is in the interest of justice to grant bail.
10. With the foregoing, the application has no merits and is dismissed.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 7th day of April 2014.

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B. THURANIRA JADEN

JUDGE