



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.40 OF 2014

REPUBLIC RESPONDENT

VERSUS

JOSEPH WAMWERE MAIGWA..... APPLICANT

RULING

The applicant JOSEPH WAMWERE MAIGWA seeks to be released on bail pending appeal or in the alternative the court orders suspension of sentence pending the hearing and determination of his appeal.

It is premised on grounds that his appeal has overwhelming chances of success, and during trial, he was out on a cash bail but never absconded. He is ready to abide by any terms this court may impose.

Mr. Muhia submitted on behalf of the applicant that the charge for which he was convicted was not proved beyond reasonable doubt as there was no evidence of contact and even the medical evidence did not support the conviction.

In opposing the application, Miss Nyakeira submitted that the applicant had not demonstrated that the appeal has overwhelming chances of success and contrary to what counsel states, the medical evidence confirmed the conviction. Further that no exceptional or unusual circumstances have been demonstrated to justify applicant being granted this prayer. She also pointed out that the appellant has now been convicted, and the issue of his faithful attendance during the trial in the lower court is not a factor to be considered.

The applicant was convicted on a charge of rape contrary to **section 3** of the **Sexual Offences Act** and sentenced to serve 15 years imprisonment.

The principles to consider in an application for bail pending appeal are set out in the case of **SOMO V R 1972 EA pg 457-481** as being

- a. Whether the applicant has an arguable appeal with overwhelming chances of success.
- b. Whether there are exceptional or unusual circumstances.

Other factors which a court ought to take into consideration are whether the sentence pre-disposes the applicant to flee the jurisdiction of the court, and whether the applicant is likely to serve a substantial portion of his sentence before the appeal is heard.

I have perused the proceedings and the memorandum of appeal. Whereas the same discloses an arguable

appeal, it does not demonstrate overwhelming chances of success.

There are no exceptional or unusual circumstances mentioned with regard to the applicant's current situation. Judgment was delivered on 31/1/2014, and considering the length of the sentence, I am persuaded that the applicant will not have served a substantial part of his sentence before the appeal is heard, bearing in mind that unlike the past, we are now four Judges dealing with criminal appeals.

Although the applicant faithfully attended court during the trial, it is not lost to me that he is currently convicted and the harshness of the sentence persuades me that were the appeal to fail, the applicant would not attend court.

I therefore decline to grant the applicant bail pending appeal and the application is dismissed. I direct appeal once ready be admitted and heard on priority basis.

Delivered and dated this 19th day of May 2014 at Nakuru.

H.A. OMONDI

JUDGE