



REPUBLIC OF KENYA

High Court at Nyeri

Criminal Appeal 6 of 2012

CHARLES WANJOHI KARUE.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

RULING

1. The application before court is notice of motion brought under section 357 of CPC for orders that the applicant/appellant be released on bail pending the hearing of the appeal.
2. It is supported by the applicant's advocate affidavit sworn on 11th July 2012 in which it is deponed that the trial magistrate erred in law by holding that the offence of indecent act was committed without addressing the mind of the court on the provisions of the Sexual Offences Act.
3. At the hearing hereof Mr. Kiminda submitted that this appeal has overwhelming chances of success in that there was no contact between the sex organs of the minor and any other part of the body of the appellant other than the allegation that the appellant inserted his fingers in the private parts of the complainant.
4. That P.W.4 only saw the appellant holding the minor but did not see whether her pants were removed and that since he was released on the main charges his conviction was founded on suspicion that he was seen on the complainant's home and was holding her.
5. It was further submitted that the appellant was also held in custody for a longer period which issue the trial court did not take into account noting that the appellant was unrepresented.
6. It was further submitted that the appellant has a low intelligence and therefore he did not even ask any question nor offered any evidence.
7. Miss Ngalyuka for the state seems to have agreed with Mr. Kiminda that court did not take into account the appellant's mental capacity since the advocates on record had indicated to the court that the same could not communicate.
8. It must be pointed out that the duty of the court is only to deal with the application at hand and not the substantive appeal and that the main principle to be considered is whether the appeal has such overwhelming chances of success, that whether there are exceptional unusual circumstances.
9. I am of the considered opinion the appellant mental condition is an exceptional circumstance and without going into the merits of the appeal there is a prima facie case made for the grant of orders sought.

10. I therefore allow the application herein and order that the appellant be released on bail pending appeal on the following terms:

a. Bond of Ksh. 100,000/- with one surety of similar amount or in the alternative cash bail of Ksh. 50,000/-

b. The appellant to appear in court for hearing or before the Deputy Registrar of this court for mention once every month with the first such mention on 25th February 2013.

Dated and delivered at Nyeri this 24th day of January, 2013.

**J. WAKIAGA
JUDGE**

Miss Wamahiu for Mr. Kiminda for appellant

Miss Maundu for the state.

Ruling read in open court in the presence of the above named.

**J. WAKIAGA
JUDGE**