



REPUBLIC OF KENYA

High Court at Nyeri

Criminal Appeal 184 of 2012

SAMUEL ITHAGI MUHIRA.....APPELLANT

Versus

REPUBLIC .....RESPONDENT

RULING

- 1.The application before the court is for bond/bail pending the hearing and determination of the appeal.
2. It is grounded upon the grounds that the appeal might take long to be heard and that the appeal has overwhelming chances of success and has raised substantial points of law which may result in the conviction being quashed and sentence set aside.
- 3.It was submitted by Mr. Maina on behalf of the applicant that there is a likelihood of the same serving substantial part of the sentence before the appeal is heard and that the appellant was out on bond doing the trial
4. It was further submitted that the appeal has overwhelming chances of success since the P.W.5 confirmed under cross examination that he could not arrive to any conclusion that there was any penetration.
- 5.Miss Kitoto for the state opposed the application and submitted that the complainant testified that she spent five days with the appellant and the medical evidence stated that her hymen was broken and there was virginal tear.
- 6.She submitted that the appellant was sentenced for 20 years and will not have served substantial part of the same by the time the appeal is heard.
7. It should be pointed out that the Court of appeal in DOMINIC KARANJA V. R [1986] KLR 612 at page 613 expressed it self on this issue as follows  
  
***“The most important issue here is if the appeal has such overwhelming chances of success that there is no justification for depriving the applicant of his liberty. The minor relevant consideration would be whether there are exceptional or unusual circumstances. The previous good character of the applicant .....is not an exceptional or unusual circumstances.”***
8. I have looked at the proceedings before the trial court and note that the appellant was sentenced to 20 years and going by the record of this court this appeal shall be heard before the appellant serves substantial part thereon.
9. On the issue of overwhelming chances of success I have noted the evidence of P.W.1 as follows:

***“We slept together in one bed and we had sex... I stayed in his house for five days. We were having sex during all those days..... I am aged 16 years now but during that time I was 15 years.”***

10. I note the sexual encounter might have been consensual but the law outlaws the same and therefore the appellant might have an uphill task in succeeding in the appeal herein .

11. I therefore find no merit in the application herein and dismiss the same.

Dated at Nyeri this 21st day of February 2013.

**J. WAKIAGA**

**JUDGE**

Mr. Maina for Maina Karingithi for the appellant

Mr. Cheboi for the state.

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