

REPUBLIC OF KENYA

High Court at Kericho

Criminal Appeal 79 of 2012

RICHARD KIPLANGAT TONU.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. The application before me is dated 17th December 2012. The application is brought under Sections 356 and 357 of the Criminal Procedure Act cap 75 of the Laws of Kenya.
2. Through the application, the Applicant Richard Kiplangat Tonui seeks orders of this court admitting him to bond/bail pending the hearing and determination of the appeal herein.
3. The application was filed under certificate of urgency the urgency being that the appellant is already serving sentence and any delay in granting the orders sought would render the appeal nugatory.
4. The grounds upon which the application is based are set out on the face of the application and these are further supported by an affidavit sworn by the Applicant on 17th December 2012. The main ground relied upon is that the complainant in this matter had sought the court's leave to withdraw the charge but that the trial court declined to record the request. This, in the view of the Applicant renders the appeal as carrying overwhelming chances of success. The Applicant pleads that unless the orders granted, he would suffer prejudice as the appeal would be rendered nugatory.
5. At the hearing of the application, learned counsel for the the Applicant Mr. Ochieng submitted that he was entirely relying on the grounds set out in the application as well as the affidavit in support. On his part, learned counsel for the Respondent Mr. Rogoncho told the court that the State was not opposed to the application.
6. I have considered the application. I make the following view of the same.
7. The appellant was convicted of the offence of defilement contrary to Section 8(1) and (3) of the Sexual Offences Act No. 3 of 2006. He was sentenced to 20 years imprisonment. The Constitution of Kenya, 2010 however makes it the right of an accused person to be admitted to bail. The State does not oppose the application to bail leaving it to this court to set bail terms.
8. This court is enjoined to create a balance that ensures that attendance of an accused person in court is secured while at the same time safeguarding the constitutional right of the applicant to bail through imposition of reasonable bail terms.
9. In the event, given the severity of the sentence the appellant is serving, and in keeping the bail terms reasonable, I am inclined to grant bond to the appellant of Kshs. 500,000/- with one surety of a similar sum.
10. It is so ordered.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 20th DAY FEBRUARY 2013.

J.M. MUTAVA
JUDGE