

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Criminal Application 193 of 2012

DAVID MUHIA MWAURA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. The applicant was charged with the offence of defilement of a girl contrary to **Section 8(1)(2)** of the **Sexual Offences Act No. 3 of 2006**, and in the alternative with indecent assault contrary to **Section 11(1)** of the said Act.
2. Following a full trial the learned trial magistrate convicted the applicant on the alternative charge, and sentenced him to serve 10 years imprisonment on 23rd January 2012.
3. On 10th April 2012 the applicant filed this application by way of Notice of Motion under a certificate of urgency for bail pending appeal. The grounds of the application as appears on the face of the application, are firstly that the applicant has an arguable appeal with high chances of success, secondly, that he is 72 years of age and suffers from high blood pressure accompanied with convulsions, and that the prison authority cannot provide good care for his deteriorating health. The applicant is ready to abide by any terms this court will deem fit to set for bond.
4. The learned state counsel Miss Maina submitted on behalf of the state, that the evidence on record was sufficient to sustain the conviction. Miss Maina however, referred to the issue of defective charge sheet which she said was raised by the applicant, and on that score conceded the application, with a notice to the applicant that the state will be pressing for a retrial at the hearing of the appeal.
5. This being an application for bail pending appeal, it was paramount that there be evidence of filing of an appeal. The principles for granting bail pending appeal require that there be an appeal in the first place and that such an appeal or intended appeal should have overwhelming chances of success. No copy of such pending appeal was attached to the application whose grounds of appeal may be said to present overwhelming chances of success.
6. On the applicant's age and ailment, the Court of Appeal held in In **Dominic Karanja vs Republic [1986] K.L.R. 612**, the Court of Appeal held *inter alia* that ill health per se would not constitute exceptional circumstances where there existed medical facilities for prisoners.
7. Lastly, since the applicant has not urged that the conviction was faulty, nor that the sentence was harsh or excessive in any manner, and there being no material upon which this court may decide that the interests of justice will be better served by reducing the applicant's sentence, except of course, for the submissions of his advocate from the bar, I find that there is not enough material before me upon which I may exercise my discretion, in favour of the applicant.

Reasons wherefore the application is dismissed.

SIGNED DATED and DELIVERED in open court this **19th** day of **February 2013**.

L. A. ACHODE

JUDGE