



REPUBLIC OF KENYA

High Court at Nyeri

Criminal Appeal 273 of 2010

DUNCAN MWAI GICHUHI.....APPELLANT

Versus

REPUBLICRESPONDENT

RULING

1. The application before court is notice of motion dated 5th October 2012 in which the applicant seeks to be released on bond or bail on reasonable conditions pending hearing of the appeal on the ground that the appeal has extremely overwhelming chances of success and that the offence for which the appellant was convicted is bailable.
2. It is supported by the affidavit of the applicant in which he depones that the appeal as evidenced by the the petition of appeal has extremely high chances of success as the learned trial magistrate erred in law and facts on various issues of facts and law.
3. At the hearing herein Mr. Muhoho submitted that evidence does not support the charge sheet which talks of diverse dates between 22/11/2009 and 1/12/2009.
4. That P.W.1 talks of a different date while the investigating officer stated that the victim informed him that it was during that time and therefore the credibility of the victim is questionable
5. That the appellant's defence was not given any consideration in the judgment.
6. Miss Maundu for the state opposed the application and submitted that on the issue of the dates P.W.1 testified that she was with the accused between 22nd November and 1st December 2009 and the P.W.5 testified that the complainant hymen were not intact. She therefore submitted that the case was proved beyond reasonable doubt.
7. In an application of this nature the court is guided by the following principles as set out in the Court of Appeal case of Dominic Karanja v R(1986) KLR pg 612
 - 1.The most important issue was if the appeal had such overwhelming chances of success there was no justification for depriving the appellant of his liberty and the minor relevant consideration would be whether there are exceptional circumstances or unusual circumstances.
 8. On the evidence tendered before the trial court and without going to the merit of the appeal herein the appellant has not put himself within the above stated guides and therefore finds no merit on the application before the court.
 9. The application is therefore dismissed.

Dated and delivered at Nyeri this 7th day of February 2013.

**J. WAKIAGA
JUDGE**

The ruling is read in open court in the presence
Miss Maundu for the State
Mr. Muhoho for the appellant.

**J. WAKIAGA
JUDGE**