

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 82 OF 2013

JOHN KIVUITU.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. **John Kivuitu**; the Applicant herein seeks to be released on bail pending appeal. He has filed an appeal- H.C. Criminal Appeal No. 188/2012 having been dissatisfied by the decision of the trial magistrate in Machakos Sexual Offence Case No. 1/2009.
2. The Applicant is supported by an affidavit deponed by the applicant who states that he was convicted and sentenced to serve 25 years imprisonment for an offence of defilement. His case has a chance of succeeding which calls for his release on bail.
3. Opposing the application, **Mr. Mwangi**, Learned State Counsel stated that the lower court evaluated the evidence adduced and found that indeed the appellant had defiled the complainant having even claimed that she was his wife. Medical evidence presented had proved the act of penetration. The appeal therefore could not succeed.
4. Further, he stated that having been sentenced to 25 years imprisonment, by the time the appeal is heard and determined he will not have served a substantial part of the sentence.
5. Bail is a channel that is used to secure one's liberty. To secure one's freedom pending appeal, some factors must be considered. For example; the strength of evidence on record. Will it be so weak such that the appeal has a chance of succeeding? The most important issue to be considered by the court is if the appeal has an overwhelming chance of success (*see Dominic Karanja versus Republic [1986] KLR 612*). In the circumstances the court would have no excuse of denying the appellant/applicant his freedom.
6. Having perused the proceedings and judgment of the Lower Court, I am not persuaded that the appeal has an overwhelming chance of succeeding. Secondly, by the time the appeal is concluded the applicant will not have served a substantial part of the sentence imposed.
7. In view of the foregoing, the application must fail. In the premises it is dismissed.

DATED, SIGNED and DELIVERED at MACHAKOS this 4TH day of SEPTEMBER, 2013.

L.N. MUTENDE

JUDGE