



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**CRIMINAL APPEAL NO 235 OF 2009**

**JIDRAPH GATHENYA KIMONDO .....APPELLANT**

**Versus**

**REPUBLIC .....RESPONDENT**

**RULING**

1. The application before court is a notice of motion filed on 7th May 2012 in which the applicant seek to be released on bail/bond pending the hearing of the appeal on terms that are just and fair.
2. It was supported by the affidavit of the appellant sworn on 11th April 2012 where the appellant deponed that the same is reasonably apprehensive that the hearing and final determination of the said appeal is likely to take long and this would be prejudicial should the appeal succeed.
3. The appellant was charged with defilement of a child contrary to section 8(1)(2) of the Sexual Offences Act No. 3 of 2006 the particulars of which were that on 4th March 2007 in Nyeri District within Central Province unlawfully committed an act which caused penetration to FWG a child under the age of eleven years. He faced an alternative charge of indecent act with a child contrary to section 11(1) of the Sexual Offences Act No. 3 of 2006.
4. In count II the appellant was charged with defilement of a child contrary to section 8(1)(2) of the Sexual Offences Act No. 3 of 2006 the particulars of which were that on 4th March 2007 in Nyeri district within Central Province unlawfully committed an act which caused penetration to MWN a child under the age of eleven years.
5. He was tried and convicted on the alternative charges of indecent act to a child and was sentenced to serve ten years imprisonment on each count to run consecutively.
6. Being aggrieved by the said conviction and sentence the appellant filed the appeal before the court and raised several grounds of appeal which can be summarized as follows:

***(a) His constitutional right under then section 72(3)(b) of the former Constitution was violated.***

***(b) There was no credible evidence to sustain any conviction.***

i. ***His defence of existence of a grudge between him and the father of the complainant was not taken into account.***

ii.

1.

2. **SUBMISSIONS**

3. When he appeared before me the appellant submitted that he needed to be granted bond to enable

- him take care of his children and also to handle a land dispute.
4. Mr. Njue for the State opposed the application on the basis that the appeal has no chances of success and that there are no exceptional circumstances to warrant the appellant being admitted to bail.
  5. In an application of this nature the court must be guided by the question of whether or not the applicant had demonstrated to the court that his appeal has overwhelming chances of success and whether there are exceptional and unusual circumstances.
  6. I have perused the proceedings before the lower court and the evidence tendered and note that though the appeal is arguable the appellant has not had enough grounds at this stage to enable the court grant his bond pending appeal. The issue of the appellant's children and the land dispute are not exceptional circumstances to enable the court release the accused on bond.
  7. I will therefore dismiss the application for bond pending appeal at this stage but allow the prayer for the appeal herein to be admitted which I hereby do and direct the registry staff to fix the same for hearing in the next appeal circle of this court.
  8. **Dated at Nyeri this 17th day of October 2013.**

**J. WAKIAGA**

**JUDGE**

**Read in open court in the presence of the appellant and Mr. Njue for the state.**

**J. WAKIAGA**

**JUDGE**