



LESIIT J.
STEPHEN MUGAMBIAPPELLANT

VERSUS

REPUBLICRESPONDENT

(An appeal from the judgment of PM KIAMA Senior Resident Magistrate in Marimati Senior Resident Magistrate Criminal Case No. 242 of 2010)

RULING

This is an application for bail pending appeal. The applicant was tried and convicted of one count of defilement contrary to section 8(1) & (4) of the Sexual Offences Act. The applicant was sentenced to 15 years imprisonment. He has now filed his appeal before this court simultaneously with an application in which he seeks to be released on bail pending appeal.

The appellant relies on four grounds on the face of the application which are:

- (i) The case has overwhelming chances of success.
- (ii) The applicant has been in custody since 7th July, 2011.
- (iii) The applicant would have served a substantial part of the sentence if he is not released on bond.
- (iv) The applicant is suffering from asthma and needs urgent and constant medical attention.

The application was urged by Mr. Otieno on behalf of the appellant/applicant.

Mr. Otieno submitted that the applicant's appeal has overwhelming chances of success. He also submitted that the applicant has been in prison since 7th July, 2011. Mr. Otieno submitted that the applicant suffers from asthma and needs urgent medical attention.

Mr. Mungai for the state did not oppose the application and urged that if allowed the applicant should provide suitable sureties and should be subjected to a reporting order.

I have carefully considered the application. I noted that Mr. Otieno for the applicant did not elaborate or substitute any of the grounds relied on for this application for instance Mr. Otieno urged that the applicant's appeal has high chances of success but did not elaborate on what basis that argument was made. I have perused the judgment of the lower court and I see no reason to make a conclusion that there are overwhelming chances that the appeal will succeed. Without any substantiation by the applicant I do not appreciate the existence of overwhelming chances of the appeal succeeding.

It has been deposed by the applicant that he is asthmatic and his condition has deteriorated due to congestion in prison. No documentation to support the applicant's contention of his medical condition

even then merely being asthmatic is not a ground to admit the applicant to bail pending his appeal.

I have come to the conclusion that this application has no merit and therefore dismiss it accordingly.
Those are my orders.

DATED SIGNED AND DELIVERED THIS 7TH DAY OF JUNE, 2012.

**LESIT, J
JUDGE.**