

TEDDY KAWIRE ODERO.....APPLICANT

VERSUS

REPUBLICRESPONDENT

(From original conviction and sentence in criminal case Number 3569 of 2007 in the Chief Magistrate's Court at Nairobi – T. Murigi (SPM) on 29/2/2012)

RULING

1. The applicant, **Teddy Kawire Odero**, approached the court by way of Notice of Motion brought under **Section 357 Criminal Procedure Code**, seeking to be admitted to bail pending the hearing and determination of his appeal **Nairobi HC Cr. App No. 80 of 2012**.
2. The appeal stems from a conviction in **CM Cr. Case No. 3560 of 2007** at Makadara law court. In the said case the applicant was convicted for the offence of defilement contrary to **Section 8(1)** as read with **Section 8(3)** of the **Sexual Offences Act No. 3 of 2006**.
3. Mr. Munyi, the learned counsel for the applicant urged that the appeal has overwhelming chances of success on the ground that the applicant was convicted on the evidence of a 15 years old witness, and that the minor confirmed in her testimony that she was pregnant and the applicant was not responsible for that pregnancy. That the evidence of **PW4** a 12 year old minor was mere hearsay, as she narrated what she had been told by the complainant. That the testimonies of the two medical witnesses confirmed that there was no scientific evidence to confirm that the applicant committed the offence.
4. Learned counsel urged the court to take judicial notice of the fact that there were no dates available in the registry for the hearing of appeals. Further that the applicant was out on bond during the trial and he observed the conditions of bail.
5. Learned state counsel, Miss Maina opposed the application on behalf of the state, and urged that the applicant was well known to the complainant and **PW4**, and that there was no reason for them to implicate him, if he was not the one who sexually assaulted her. Further that the issue of the pregnancy not being his, did not give him permission to defile her, and that **Section 124** of the **Evidence Act** had done away with the requirement for corroboration.
6. The principles to be considered in an application for bail or bond pending appeal are now settled. In the case of **Dominic Karanja v Republic [1986] KLR pg. 612**, the Court of Appeal held that:
 1. **The most important issue was that if the appeal had such overwhelming chances of success, there was no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.**
 2. **The previous good character of the applicant and the hardships, if any, facing his family were not exceptional or unusual factors.**
7. I have perused the evidence and judgment on record, as well as the submissions from the appellant and the respondent. Without delving into the merits and demerits of the appeal, I am not persuaded that the appellant has demonstrated that his appeal has overwhelming chances of success.
8. It shall be remembered that bail pending appeal is not automatic because the applicant no longer enjoys the presumption of innocence having lost it when he was convicted. The applicant's observance of his bond term while on trial cannot be termed as exceptional or unusual circumstances upon which I can conclude that it is in the interest of justice to grant the bail sought.

9. For the foregoing reasons, I therefore find that the application before me is lacking in merit and decline to grant it. The application is dismissed.

SIGNED DATED and **DELIVERED** in open court this *26th day of July 2012.*

L. A. ACHODE
JUDGE