



**HARRISON MUNDIA KABURU.....APPELLANT**

**versus**

**REPUBLIC.....RESPONDENT**

*(Appeal arising from the the judgment of Mr. D.O. Ogembo Senior*

*Principal Magistrate Nyeri in criminal case no. 30 of 2009)*

**RULING**

The application before me is dated 28th September 2011 brought under section 123(3) of the Criminal Procedure code and Article 49(1)(h) of the Constitution of Kenya wherein the appellant seeks to be admitted to bail pending appeal.

It is supported by the affidavit of Mr. Andrew Kariuki Advocate where he deponed that according to the new constitution bond is now granted unless there are compelling reasons and that the appellant is not likely to abscond if released on bond neither is he likely to commit crime.

I would like to point out that the constitutional provision cited by the appellant is only applicable to an arrested person and might not apply to the appellant herein since the same has been tried and convicted.

The above notwithstanding it is noted on authority that the grounds upon which the bond can be granted pending appeal is that the appellant must demonstrate that the appeal has high chances of success, there are exceptional or unusual circumstances in the matter and that the issue of the sentence being fully served before the appeal is determined ought to be taken into account.

The appellant herein was charged with defilement of a girl contrary to section 8(1)(4) of Sexual Offences Act No. 3 of 2006. he was tried and convicted and sentenced to serve 15 years imprisonment.

Being aggrieved he filed this appeal and listed in his grounds of appeal as follows:

**a) *The learned Magistrate erred in Law and fact in convicting the appellant on uncorroborated sexual offence and failed to order for either an appropriate sample or samples to be taken.***

In support of the application Mr. Kariuki submitted that the evidence of the minor was not corroborated and that there was no medical confirmation of defilement. He further submitted that the court erred in disregarding the evidence of the appellant and his witnesses. He therefore submitted that there is an overwhelming chances of the appeal succeeding.

Miss Maundu for the state opposes the application on the ground that the appeal has no chance of success. She submitted that the doctor in his evidence found that there were minor laceration on the private parts of the complainant. She submitted that the court found that there were contradictions on the evidence of the defence witness she therefore urged the court to dismiss the application.

I have looked at the evidence tendered before the trial court and in particular the evidence of PW4

the Doctor and the fact there was a previous case involving the appellant herein and the complaint and I am of the considered view that there might be a possibility of the appellants appeal herein succeeding.

I therefore allow the application herein and grant the applicant bond of Kenya shillings five hundred thousand (Ksh. 500,000/-) with one surety of like amount in the alternative the same may be released on cash bail of Ksh. 250,000/-

Dated and delivered at Nyeri this 11th day of October 2012.

**J. WAKIAGA**

**JUDGE**

Ruling read in open court in the presence of the appellant and counsels

**J. WAKIAGA**

**JUDGE**