



REPUBLIC OF KENYA

High Court at Kakamega

Criminal Appeal 170 of 2012

**(an application for bond pending appeal under Sec. 357 (1) (2) of
the Criminal Procedure Code)**

FREDRICK LUBEMBE SHIVANDAAPPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The appellant was on 18.7.12 convicted of the charge of defilement contrary to section 8(1) (4) of the Sexual Offences Act No. 3 of 2006. He was sentenced to serve 15 years imprisonment.

The appellant was aggrieved by the conviction and sentence and appealed to this court. On 24.7.12, the appellant filed an application pursuant to Section 357 (1) (2) of the CPC and. He sought orders to be granted bail pending the hearing and determination of this Appeal.

The grounds of the application are that the appeal raises arguable grounds and has high chances of success. That the applicant will abide by any bond terms granted by this court and that the release on bail will enable the applicant to continue with his studies at Shitoli Youth Polytechnic.

The application is supported by the annexed affidavit of the appellant.

Mr. Manyoni Advocate appeared for the appellant. Ms Ngovi appeared for the state. Ms Ngovi did not object to the application.

The right to be granted bail pending the hearing and determination of a case or an appeal is available to all persons. However the court has the discretion to grant or refuse bail depending on the circumstances of each case. The court is required to take into consideration settled principles of the law in determining whether or not to grant bail pending hearing of a case or pending the hearing of the appeal.

The principles to be considered by the court were set out in the case of **MWAURA VS REPUBLIC (1986) KLR 600.**

The said principles include the following; the nature of the offence, the strength of the evidence, the character and behavior of the accused and the seriousness of the punishment to be meted if the accused is found guilty. The mother of all considerations is whether the accused will turn up at the appointed place and time for the trial; any exceptional circumstances and whether the accused will interfere with the witnesses if released on bond.

Whereas the above principles are applicable in regard to applications made by accused persons seeking to be released on bail pending trial, the same principles are applicable when the court is considering whether to release an appellant pending the hearing of an appeal.

In the case of an appellant seeking to be released on bail pending the hearing of an appeal, the court has to put into consideration the added fact that the appellant having been convicted will most likely have an incentive to abscond if released on bail.

Having carefully considered application and perused the record of appeal in its entirety, this court's view is that the appellant is likely to abscond if released on bail pending the hearing and determination of the appeal. This is because the appellant has already been convicted and sentenced to 15 years imprisonment.

I have considered the submissions by the appellant that his appeal has high chances of success. There is nothing in the petition of appeal that points to the likelihood that the appeal will succeed, without this court having the benefit of hearing the submissions during the actual appeal.

In the premises therefore the appellant's application to be released on bond pending appeal is unmeritorious and is hereby dismissed.

Dated, delivered and signed at Kakamega this 22nd day of November, 2012

B. THURANIRA JADEN
JUDGE