



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT BUNGOMA**

**CRA NO.49 OF 2011**

*(Arising from original BGM CM CR. NO.1883 of 2010)*

<b>SYPHREEN WASIKE MASIBO</b>	:~::~:	<b>APPELLANT</b>
	~VRS~	
<b>REPUBLIC</b>	:~::~:	<b>RESPONDENT</b>

**RULING**

This is a notice of motion dated 04/05/2011 seeks for orders that the Appellant/Applicant be released on bail pending appeal. The Applicant was convicted of defilement contrary to section 8 of the Sexual Offences Act and jailed for twenty (20) years. The grounds upon which this application is based are that it has overwhelming chances of success. That the application may be rendered nugatory if the orders sought are not granted. The supporting affidavit sworn by the Applicant’s counsel David Were expounded on the grounds.

Mr. Ogoti for the state opposed the application on grounds that the appeal has no chances of success given the water tight evidence tendered by the prosecution. He urged the court to dismiss the application.

I have perused the proceedings of the trial court. I have considered the ingredients of the offence of defilement and the sentence imposed. I am not convinced that this appeal has high chances of success. The Appellant was sentence to serve twenty (20) years. This court has dates for hearing appeal cases available before the end of the year, that is in three or four months time. The Applicant was convicted only two months ago. The facts dislodged the Appellants claim that the appeal is likely to be rendered nugatory. The Deputy Registrar will fastrack the preparation of the appeal record to ensure that the appeal is heard and determined without delay.

I find no merit in the application and I dismiss it accordingly.

**F. N. MUCHEMI**  
**JUDGE**

Ruling delivered and dated this 25<sup>th</sup> day of July, 2011 in the presence of the Mr. Were for the Appellant and state counsel Mr.Ogoti.

**F. N. MUCHEMI  
JUDGE**

**ORDER**

The Deputy Registrar is hereby directed to call for the lower court file, prepare the record of appeal with view of admitting the appeal for hearing. Mention on 21/9/2011 to confirm action by Deputy Registrar.

**F. N. MUCHEMI  
JUDGE**