

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

Criminal Appeal 68 of 2010

YATICH KIPTOO.....APPELLANT

VERSES

REPUBLIC.....RESPONDENT

RULING

The Appellant/Applicant was convicted of the offence of defilement . And was sentenced to serve imprisonment for a term of twenty years. He has appealed on the grounds that the conviction was wrongful on the ground that penetration was not proved and the sentence meted out was unlawful as it was not the right one for the age of the complainant had the case been proved. The state opposed the application for bail pending appeal stating that the offence had been proved.

A reading of the proceedings does not show that evidence leading to prove penetration, partial or otherwise was consent. The evidence of age of the complainant was contradictory and that poses a problem to the legality of the sentence passed.

The guiding principle whether or not to admit an appellant to bail pending appeal is that the appeal has overwhelming chances of success. Unusual and/or exceptional circumstances, particularly a combination of them will be considered favourably to the benefit of the Appellant/applicant. No purpose will be served by denying an Appellant bail only for that Appellant to be released on a successful appeal. In the circumstances of this case it is my finding that he appellant has an appeal with overwhelming chances of success. I admit him to bail pending appeal. He will be released on a bond of Kshs 60,000/= with a surety of like amount.

Orders accordingly.

DATED SIGNED AND DELIVERED AT ELDORET THIS 16TH DAY OF JUNE 2010

**P.M. MWILU
JUDGE.**

IN THE PRESENCE OF

No appearance - Advocate for Appellant

Mr. Kabaka - For the State

Andrew Omwenga - Court Clerk