

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Criminal Appeal 101 of 2010

PAUL MUGUNA GERALD APPELLANT
VERSUS
REPUBLIC RESPONDENT

RULING

What is before court is a Notice of Motion dated 31st May 2010. It is an application for bail pending appeal. The appellant was charged before the lower court with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the Sexual Offences Act 3 of 2006. In the alternative, the appellant was charged with the offence of indecent assault contrary to section 11 (1) of the same Act. After trial, he was convicted on the alternative charge and was sentenced to imprisonment to 10 years. He has filed an appeal now seeks bail pending the hearing and the determination of that appeal. It was argued in support of that application that the appellant's appeal has high chances of success. Principles of granting bail pending appeal were set out in the cases:- In the case of **Somo Vs. Republic** [1972] EA. 476 the court held that an applicant seeking bail pending appeal had to show his appeal has overwhelming chances of success and in which case he ought not to be kept in prison whilst awaiting the hearing of his appeal. **Dominic Karanja – Vs. – Republic** (1986) KLR the Court of Appeal held:-

“The previous good character of the applicant and the hardships, if any, facing his family were not exceptional or unusual factors. Ill health per se would also not constitute an exceptional circumstance where there existed medical facilities for prisoners.”

I have perused the lower court proceedings and its judgment. I find the appellant's appeal does not have high chances of success. I have considered the argument raised by the appellant's counsel that the prosecution's case was weakened by the failure of the prosecution to call the complainant's sister S. The fact that the sister to the complainant was not called does not, in my view lead me to find that the appeal has high chances of success. For that reason, I decline to grant bail pending appeal as sought and the Notice of Motion dated 31st May 2010 is hereby dismissed.

Dated and delivered at Meru this 8th day of October 2010.

MARY KASANGO
JUDGE