



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CRIMINAL APPEAL NO.156 OF 2010

PETER MUTHINJA MBAE.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

RULING

The applicant was charged before Nkubu SPM’s court with one count of child sexual prostitution contrary to Section 15(b) & (g) of the Sexual Offences Act. S 15 (b) provides as follows;

“(b) acts as a procurer of a child for the purposes of sexual intercourse or for any form of sexual abuse or indecent exhibition or show

(g) gives monetary consideration, goods or other benefits or any other form of inducement to a child or his parents with intent to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show”

The Applicant was found guilty and convicted for the offence. He was sentenced to serve 10 years imprisonment. He has brought this Application seeking to be granted bail or bond pending the hearing and determination of his Appeal.

There is only one ground cited as the basis of this Application, that the appeal has overwhelming chances of success.

Ms Nelima urged this application on behalf of the Applicant. Counsel elaborated the ground cited in the Application by urging that the evidence against the Application was that of a single witness who was a child and whose evidence was not corroborated. Counsel also said evidence adduced was not at par with the particulars of the charge.

Mr. Musau opposed this Application on behalf of the state. The learned state counsel urged that the evidence of the complainant did not require any corroboration and that there was no minimum number of witnesses required to prove a case.

I have considered submissions by both counsel. I have also perused the proceedings of the lower court. It is true that the evidence against the applicant was that of the Complainant, a child of 12 years at the time.

The Applicant relied on **Chimambhai-v- Rep [1971] EA 343** which I have considered. The only distinction I draw from this case is that it involved handling of goods which the instant case involves sexual offence against a child.

The Appeal in the instant case if prepared for hearing can be heard within a year being a single Judge Appeal. It cannot be argued that the Applicant will walk long for his appeal to be heard.

I am aware that bail can be granted for an offence under the sexual offences Act. However it has to be for exceptional circumstances, none of which have been pleaded in this Application.

The merits of the prosecution case and of the Appeal will be determined at the hearing. Neither of them are frivolous .

I considered that some evidence was adduced against the Applicant and that the offence is very serious. I am not persuaded that the Applicant deserves at this state to be released on bail pending his Appeal.

The Applicant's Application is rejected.

Dated at Meru this 3rd day of December 2010

LESIIIT, J

3rd December 2010

Coram:

Lesiit J.....Judge
Kiriimi/Mwonjaru.....Court clerks
Mr. Kiara.....For Applicant
Mr. Musau.....For Respondent/State

Ruling was read, signed and delivered in open court this 3rd December 2010.

LESIIIT
JUDGE