

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 272 of 2005

S W N APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Appeal from original Judgment and Conviction in Senior Resident Magistrate's Court at

Nanyuki in Criminal Case No. 1385 of 2005 dated 1st December 2005 by Ms R. N. Muriuki – SRM – Nanyuki)

RULING

Stephen Wanjohi Ndirangu (hereinafter referred to as the applicant) seeks to be released on bail pending the hearing and determination of the appeal which the applicant has lodged against the judgment of the Senior Resident Magistrate Nanyuki convicting the applicant of the offence of incest by a male contrary to section 166 (1) of the Penal Code and sentencing the applicant to 15 years imprisonment. It is the applicant's contention that the appeal has overwhelming chances of success as the medical evidence adduced was not conclusive of any sexual intercourse and none of the prosecution witnesses was an eye-witness, and that no DNA test was carried out to prove paternity.

The application was ably argued by Mr. Wahome Gikonyo who appeared for the applicant. Having considered the same however I do concur with learned State Counsel that all that Mr. Wahome has demonstrated is that the applicant has an arguable appeal but that does not necessarily mean that his appeal has overwhelming chances of success. This court being the first court of appeal will have the obligation during the hearing of the appeal to reconsider and evaluate all the evidence which was adduced before the trial magistrate and arrive at its own finding.

The charge facing the applicant was a serious charge. The applicant has not shown any serious hardship or special reason as to why he should be released on bail pending appeal. In the circumstances I reject the application for bail pending appeal.

Dated signed and delivered this 22nd day of February 2006

H. M. OKWENGU

JUDGE