



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Misc. Crim Appli. No 79 of 2006.**

**GEORGE KIHANYA KIRUGO.....  
.....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**R U L I N G**

The Applicant herein seeks to be admitted to bail or bond pending the hearing of his Appeal **No. 46 of 2005**. He cites four grounds one that the appeal has an overwhelming chance of success, two that he stands to suffer irreparable loss and damages if the Application is not granted; three that the conviction was erroneous and; four that he was ready and willing to abide by any terms of bond granted by the Court. **MR. GATUMUTA** argued the application on behalf of the Applicant while **MISS NYAMOSI** opposed the application on behalf of the State.

In brief the Applicant was found guilty of having carnal knowledge of a boy **ISMAEL KAMAU** against the order of nature. He was convicted and sentenced to 20 years imprisonment on the 2<sup>nd</sup> February 2006.

The complainant in this case was a child of six years and was related to the Applicant, in that the Applicant was his uncle. The Applicant's advocates main contention is that the Complainant's evidence should not be believed because he did not disclose that the Applicant had sodomised him until his mother, PW2, beat him up. The learned counsel for the State admitted that the Complainant did not report the assault to his mother until he was beaten. **MISS NYAMOSI** did not submit further on that.

I perused the record of the proceedings. The beating of the Complainant by his mother should be put in the right perspective. PW2 the Complainant's mother, said that he beat up the Complainant because he went home late from school on the day in question. It is after he was beaten that he told his mother the reason for his lateness which was the fact that the Applicant had intercepted him on his way home and had sodomised him. The assault was confirmed by the Doctor who examined the Complainant. The beating of the Complainant had no bearing whatsoever to his credibility as a witness and for purposes of the grounds cited for this application, would not support a finding that the appeal had high chances of success.

On Complainant's evidence not supporting the charge, having considered the totality of the evidence adduced before the Court, I agree with learned State counsel that the Complainant's evidence was corroborated by the Doctor who examined him after this attack. The issue of what the Complainant meant by word 'back', I leave to the appeal court to decide. On fact of the record, I see no demonstration of the Applicant's appeal having an overwhelming chance of success. Further I see no demonstration that the Applicant is likely to suffer irreparable loss or damages as he claims. He was jailed for 20 years and only last month. He has hardly served any part of his sentence. The Applicant's appeal, I am advised by the registry is likely to be heard this year. I do not see what 'loss' or 'damage' the Applicant is likely to suffer.

The Applicant has failed to demonstrate that there are any errors apparent on the record or that the conviction was erroneous. The application is not merited at all and is dismissed.

Dated at Nairobi this 15<sup>th</sup> day of March 2006.

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**LESIIT, J.**

**JUDGE**

Read signed and delivered in the presence of;

Mr. Gatumuta for the Applicant

Miss Nyamosi for the State

CC: Huka

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**LESIIT, J.**

**JUDGE**