



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Misc. Crim Appli. 66 of 2006

CHEGE MBUGUA WANTEMA.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

The Applicant herein was found guilty of **Defiling** the Complainant, a girl aged 9 years and who was his niece, on the 1st of January 2005. The Applicant was sentenced to serve 20 years imprisonment. The Applicant now seeks bond or bail pending the hearing and determination of his appeal. He has cited two grounds in support of the application.

One, that he is sick and is also suffering psychological problems.

Two, that his appeal has high chances of success.

MISS GATERU for the State opposed the application. Learned counsel submitted that having perused the lower court file, she believed that the appeal did not have an overwhelming chance of success. Counsel submitted that the Applicant had been identified by the Complainant and that there was sufficient evidence to sustain a conviction.

On that ground I have perused the record of the proceedings in the lower court. The Applicant did not substantiate why he was convinced that his appeal had a high probability of success. Upon perusing the record myself, I was not satisfied that this ground is sustainable. First of all, the issue of identification is out of question for two reasons. The first reason is that the Applicant was known to the Complainant before the incident, the latter being the formers niece. The second reason being that the Complainant was nine years old and was found by the trial magistrate following *voire dire* examination to be possessed of sufficient knowledge to know and understand the duty to tell the truth. The Complainant was bright enough as to give detailed account of the incident from the point the Applicant approached her to the point he executed his attack.

The evidence on record was good and strong to sustain a conviction. The learned trial magistrate analyzed the evidence well and wrote a sound judgment. I see no basis of finding that there was a high probability that the appeal would succeed as argued by the Applicant.

On the second ground that he was sick, learned counsel submitted that there was sufficient facility in prison for the treatment of the Applicant whenever the need arose. The Applicant challenged that submission saying that the facility was not readily accessible to him. This ground cannot, standing on its

own, warrant the granting of bail/bond to the Applicant pending the hearing of his appeal. There is sufficient proof that the Applicant was receiving treatment while in prison. That means there are sufficient medical facilities to cater for his medical needs.

I find no basis of allowing this application as it has no merit. I dismiss it accordingly.

Dated at Nairobi this 8th day of March 2006.

LESIT, J.

JUDGE

Ruling read in presence of:

Applicant in person - present

Miss Gateru for State

CC: Huka

LESIT, J.

JUDGE