

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Misc Crim Appli 393 of 2006

OMARI KAMADULA JUMA.....APPLICANT

VERSUS

REPUBLICRESPONDENT

R U L I N G

The Applicant was convicted of **DEFILEMENT OF AN IMBECILE** contrary to **Section 146** of the **Penal Code** and on 30th June 2006 was sentenced to 10 years imprisonment. In the Applicant's Chamber Summons application dated 21st July 2006 the Applicant seeks to be released on bail pending the hearing and determination of his **appeal No. 259 of 2006**.

Mr. Kamau Kinga argued the application on behalf of the Applicant. It was his contention that the Applicant's appeal had high chances of success. Counsel submitted that the case was never investigated by the police and that the conviction was based on uncorroborated circumstantial evidence. Counsel also submitted that the Applicant lived in the same plot as the Complainant and no complaints had been raised by any party throughout the hearing in the lower court even though the Applicant was out on bond.

Miss Wafula State Counsel represented the Respondent in this Application. Counsel opposed the application and submitted that the Applicant had neither demonstrated that the appeal had high chances of success nor were there exceptional or unusual circumstances that would warrant the application being granted.

I have carefully considered this application and also carefully perused the record of the proceedings. The Applicant was convicted of a serious offence. The evidence adduced in court was circumstantial since there was no direct evidence occasioned by the fact that the Complainant in this case is severely retarded.

The Applicant asserted that the conviction was predicated on uncorroborated circumstantial evidence. I do think that there was circumstantial evidence against the Applicant in this case. The issue of whether that evidence was strong to convict and whether corroboration was required is a matter for the appellate court. The appellate court will have the duty to evaluate and analyze afresh the evidence that was adduced in the court below and draw its own conclusions on it. That fresh analysis of the evidence cannot be undertaken in an interlocutory application such as the one before me. I therefore decline to rule on that issue as that will preempt the appeal.

The fact the Applicant was of good conduct, that he kept the terms of bond and that he did not commit another offence during the pendency of the case in the court below cannot justify granting a bail pending appeal of a convicted person standing on its own. In **Dominic Karanja vs. Republic [1986] KLR 612 Nyarangi, Platt and Gachuhi JJA** held: -

“The previous good character of the Applicant and the hardships, if any, facing his family were not exceptional or unusual factors... A solemn assertion by an Applicant that he will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal.”

The most important factor to consider is whether the appeal had an overwhelming chance of success and secondly if there were unusual or exceptional circumstances.

I find the Applicant did not demonstrate either grounds and that the application lacks in merit and I dismiss it accordingly.

Dated at Nairobi this 11th day of October 2006.

LESIIT, J.

JUDGE

Ruling read in presence of:

Applicant present

Ms. Kamau Kinga for the Applicant

Miss Wafula for State

CC: Wambui

LESIIT, J.

JUDGE