

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO. 74 OF 2005

SAMUEL MUCHIRI GICHUKI.....APPLICANT
VERSUS
REPUBLICRESPONDENT

R U L I N G

The Applicant was convicted of the offence of **UNNATURAL OFFENCE** contrary to **Section 163(1) of Penal Code**. He was sentenced to serve 7 years imprisonment. He now seeks bail pending his appeal filed as **H.Cr. Appeal No. 23 of 2005**. The sole ground argued in support of this Application is that the Applicant has high chances of success on basis of contradictory and inconsistent evidence adduced by the Complainant. The application is unopposed.

MR. KAMANGU counsel for the Applicant argued that there was discrepancy in the date the offence was allegedly committed and which put in doubt the findings made by the doctor who filled the P3 form.

This is a very serious offence for which care is called for in handling such an Application. I see from the proceedings that the Complainant in the case was the wife of the Applicant by virtue of having co-habited for a year and having a baby together. I have considered the alleged contradiction highlighted by counsel for the Applicant.

MRS. TOIGAT on her part submitted that in light of the contradictions in the Complainant's evidence, the State was not opposing the Application.

MR. KAMANGU submitted that the P3 form was completed 2 months after the alleged offence. The counsel submitted that the injuries recorded in the P3 form could not have been on the Complainant. Even though **MRS. TOIGAT** did not respond to that aspect of the Applicant's submission, it is trite law that medical evidence can only be challenged by other evidence of an expert. It cannot be challenged by mere submission by counsel as attempted herein. Besides the P3 form is in tandem with the Complainant's evidence and I see no inconsistency in the evidence as alleged.

I do find that there is no overwhelming chance that the Applicant has overwhelming chances of success. The grounds upon which this Application was based have not been sustained. I find no merit in the Application and dismiss it accordingly.

Dated at Nairobi this 29th April 2005.

LESIIT, J.

JUDGE

Read, signed and delivered in the presence of;

LESIT, J.

JUDGE