

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. CRIMINAL APPLICATION NO.170 OF 2000

GEDION MUNA WACHIRA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

The application before me is for bail pending appeal. The applicant and another were found guilty of indecent assault contrary to Section 144(1) of the Penal Code and Assault contrary to section 251 of the Penal Code. The applicant was sentenced to serve 4 years in prison for indecent assault and fined Kshs.5000/- in default 6 months imprisonment for assault under Section 251 of the Penal Code.

I think it is now settled in Kenya that bail pending appeal will only be granted if the applicant can show:-

- (i) that there are exceptional or unusual circumstances, or
- (ii) that the appeal has overwhelming chances of success.

In this case the Judge who will hear the appeal will have to decide the following pertinent matters:-

- (a) Whether the charges on which the applicant was convicted were bad for duplicity
- (b) Whether a thigh is a private part as pleaded in the particulars of the charge.
- (c) Whether the prosecution refused to call the girl who was in the company of the complainant because her evidence would have been adverse to the prosecution case.

All these matters appear on the face of it to be in favour of the applicant. But it is for the Judge who will hear the appeal to make a decision.

As it is now, I think it is unsafe to keep the applicant in prison as I think his appeal has overwhelming chances of success. I order that the applicant be released on his on bond of Shs.100,000/- plus two sureties of similar amount to be approved by the Deputy Registrar of this court.

There will be mentions of the applicant's appeal as shall be determined by the Deputy Registrar of this court.

Dated and delivered at Nakuru this 26th day of January, 2000

D. M. RIMITA

JUDGE

26.1.2001.