



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL NO. 30 OF 2018

VINCENT AYOYIAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The appellant/applicant has filed an application dated 6th August 2019 seeking to be released on bond/bail pending the hearing and determination of the appeal filed herein. The grounds of the application are that the appeal has high chances of success. That the applicant was on bail during the hearing in the lower court. Further that there are no compelling reasons that would warrant the orders sought being denied.
2. The prosecution did not oppose the application.
3. The applicant was convicted of the offence of rape of a person with disability contrary to section 7 of the **Sexual Offences Act No. 3 of 2006** and sentenced to serve ten (10) years imprisonment. He was dissatisfied with the conviction and the sentence and filed the appeal herein.
4. The court has powers under section 357 of the Criminal Procedure Code to grant a convict bond pending appeal. The principles applicable in an application for bond pending appeal are that the applicant has to demonstrate to the court that:-
 - 1) There exist exceptional circumstances to warrant grant of bail/bond.
 - 2) The appeal has overwhelming chances of success.
5. In **Somo Vs Republic (1972) EA 476** the Court of Appeal held that the most important ground is that the appeal has an overwhelming chance of being successful, in which case there is no jurisdiction for depriving the applicant of his freedom.
6. These principles were re-stated by the same court in **Jivraj Shah Vs Republic (1980) eKLR** where the court stated that:-

“(a) The principal consideration in an application for bail pending appeal is the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it is in the interest of justice to grant bail.

(b) If it appears prima facie from the totality of the circumstance that the appeal is likely to be successful on account of some substantial point of law to be argued and that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail exists.

(c) The main criteria is that there is no difference between overwhelming chances of success and a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed and the proper approach is the consideration of the particular circumstances and weight and relevance of the points to be argued.”

Also see Mundia Vs Republic (1986) KLR 623

7. The evidence against the applicant was that the complainant in the case was mentally retarded. That on the 15/6/2015 a witness PW3 saw the applicant having sex with the complainant in a maize plantation. He informed his mother PW2 who went and arrested the applicant. She took the complainant and the applicant to Mudete police station. The complainant was taken to Sabatia Health centre. She was examined by a clinical officer PW4 who found her with swollen labia minora and majora with clear fluid oozing from the vagina. A laboratory speculum examination was conducted that revealed presence of spermatozoa. She was examined by a psychiatrist PW5 at Vihiga County Referral

Hospital who found her to be mentally retarded. The applicant was charged with the offence.

8. I have considered the application. The applicant has not demonstrated that there are exceptional circumstances to warrant him being granted bond pending the hearing of the appeal. He has also not shown that the appeal has overwhelming chances of success. The application is declined.

Delivered, dated and signed in open court at Kakamega this 12th day of February, 2020.

J. NJAGI

JUDGE

In the presence of:

Mr. Chanzu for Applicant

No appearance for Respondent

Applicant - present

Court Assistant - Polycap

14 days right of appeal.