



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL APPEAL NO. 73 OF 2019

REUBEN SHISIA.....APPLICANT/APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant has filed an application dated 24th July, 2019 seeking to be granted bond pending the hearing and determination of the appeal which he has filed herein. The grounds in support of the application are that:-

(1) The appeal has overwhelming chances of success.

(2) The applicant is not a flight risk.

(3) The applicant is ready to comply with all the conditions or bond terms that the court may impose.

2. The application arises out of the conviction of the applicant at the Chief Magistrate's Court at Kakamega where he was found guilty of the offence of defilement contrary to Section 8 (1) as read with Section 8 (4) of the Sexual Offences Act 2006 and sentenced to serve 15 years imprisonment. The victim in the case was reported to be aged 16 years.

3. The applicant was represented by Mr. Munyendo advocate. The advocate told the court that the applicant was on bond during the trial at the lower court. Therefore that he is not a flight risk. He implored the court to grant the applicant bond pending appeal. The state through the state counsel Miss Kibet did not oppose the application.

4. The evidence for the prosecution was that the applicant met the complainant and her sister on the way. The applicant was riding a motor cycle. He offered the complainant and her sister a lift on the motor cycle. He then took them to a room. He told the complainant's sister to go away. He took the complainant into the room and defiled her. Meanwhile APC Odudo PW2 then of Matioli AP Camp received a report that a school girl was locked up in a room at a bar. He went to the place. He was shown the room. He ordered the people who were inside to open the door. The appellant opened the door. They found the complainant in the room with the appellant. He took them to Kakamega Police Station. The complainant was escorted to Shinyalu Health Centre where she was examined by a clinical officer. She was found to be two months pregnant. Nothing significant was found in her genitalia. The age of the complainant was assessed at 16 years. The applicant was charged with the offence.

5. 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.

6. 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 justification for depriving the applicant of his freedom.

7. 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.”

8. In this case the applicant was found having locked up the complainant in a room. In my view the appeal does not have overwhelming chances of success. There are no exceptional circumstances that warrant the applicant to be released on bond pending appeal. The application has no merit and is accordingly dismissed.

Delivered, dated and signed in open court at Kakamega this 2nd day of October, 2019.

J. NJAGI

JUDGE

In the presence of:

No appearance for applicant/appellant

Miss Ombega for respondent

Court Assistant - George