



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL DIVISION
CRIMINAL APPEAL NO. 140 OF 2015

BETWEEN

LUKE SHINDIKHA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

**(Being an appeal from the conviction and sentence of Hon. T.K. Kwambai RM in Butali SRM'S
Cr. Case No. 479 of 2014 delivered on 24.11.2015)**

R U L I N G

Introduction

1. The appellant (hereinafter referred to as applicant) was tried, found guilty and convicted of the offence of defilement contrary to section 8(1) (3) of the Sexual Offence Act No. 3 of 2006. Upon conviction the applicant was sentenced to 20 years imprisonment. Being dissatisfied with both conviction and sentence, he filed the present appeal. The appeal is fixed for hearing on 25.05.2017.
2. In the meantime, the applicant has asked this Honourable Court to release him on bail/bond pending appeal.

Response to the Application.

3. The application is opposed on grounds that the applicant has not proved that;-
 1. There exist exceptional circumstances to warrant grant of bail/bond.
 2. His appeal has overwhelming chances of success.
4. Counsel for the respondent placed reliance on the case of **Dominic Karanja – vs – Republic (1986) KLR 612** in which the Court of Appeal held inter alia, as follows;-
 1. The most important issue was that if the appeal has such overwhelming chances of success, there was no justification, for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.
 2. The previous good character of the applicant and the hardships, if any facing his family were not

exceptional or unusual factors. Ill health person would also not constitute an exceptional circumstances where existed medical facilities for prisoners.

3. 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.

5. The above stated factors are the ones that will determine whether the applicant herein should be released on bail/bond pending appeal.

Analysis and Determination

6. I have carefully perused the record and especially the evidence and the judgment of the learned trial Magistrate and also the applicant's five grounds of appeal. From a reading of all the above, it is not obvious that the applicant's appeal has overwhelming chances of success. Since the applicant did not give other reasons why he should be released on bail/bond pending appeal.

7. I find that his application for bond/bail pending appeal lacks merit and the same is accordingly dismissed. The applicant shall thus remain in custody pending hearing of his appeal on 25.5.2017.

It is so ordered.

Ruling delivered, dated and signed in open court at **Kakamega** this **10th day of May 2017**

RUTH N. SITATI

JUDGE

In the presence of;-

.....Present in person.....for Applicant

.....Mr. Juma(present).....for Respondent

.....polycap.....Court Assistant.