



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CRIMINAL APPEAL NO. 17 OF 2017**  
**REUBEN SHITILU LIMISI.....APPELLANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**  
**(Being an appeal from conviction and sentence in Kakamega**  
**CMC Cr. Case No. 2 of 2012 delivered on 18.01.2017)**

**R U L I N G**

**The Application**

1. By his Notice of Motion dated 20.2.2017, the appellant (herein referred to as applicant) prays for an order releasing him on bond pending hearing and de termination of his appeal. The application is premised on grounds that his appeal is arguable with high chances of success and further that unless this application is allowed he is bound to serve a large portion of the sentence since it may take a long time for the appeal to be heard and determined. The application is also premised on the applicant's supporting affidavit dated 20.2.2017.
2. The application is opposed on grounds that the Constitution of Kenya 2010 does not provide for bond pending appeal. Further that the applicant has not demonstrated that his appeal has high chances of success. Thirdly, that the applicant, who is serving a life sentence is a flight risk.
3. In reply, the applicant submitted that throughout the trial which started in 2012 until he was sentenced on 18.01.2017 he was on bond and attended court religiously. He stated that he would adhere to all the bond terms that may be imposed by this Honourable Court. He prayed for the order.

**Background**

4. The applicant was tried, found guilty and convicted of the offence of defilement contrary to section 8(1) as read with Section 8(2) of the Sexual Offences Act, No. 3 of 2006. Upon conviction, he was sentenced to life imprisonment as by law provided.
5. Being dissatisfied with the entire judgment of the learned trial Magistrate he filed this appeal through the petition of appeal dated 31.01.2017. His prayers are that the appeal be allowed, conviction quashed and sentence set aside so that he is set free.

## **The Law**

6. In the case of **Ademba-vs- Republic [1983] KLR 442**, the Court of Appeal stated that;-

- i. Bail pending appeal may only be granted if there are exceptional or unusual circumstances.
- ii. The likelihood of success in the appeal is a factor to be taken into consideration in granting bail pending appeal, and that if there is no such likelihood, the application shall not be granted.

7. The above principles were reiterated in the case of **Mutua – vs – Republic [1988] KLR 497**. The Court of Appeal also noted that an applicant for bail pending appeal has been convicted by a properly constituted court and is undergoing punishment because of that conviction which stands until it is set aside. The court noted further that a court considering an application for bail pending appeal should be slow to release an applicant whether from the point of view of his welfare or the welfare of his family unless there is a real reason why the Court should do so.

- The **Bail and Bond Policy Guidelines** issued by the Judiciary in March, 2015 recognize that whether or not to grant bail or bond is a discretion of the court, The guidelines only offer a guide to the courts in achieving harmony in bond terms, Which is reasonableness of bond terms. If the instant application had been made by an applicant awaiting trial this court would consider such factors as the nature of the charge or offence and seriousness of the punishment to be meted out on conviction; the strength of the prosecution case; the character and antecedents of the accused person, the failure of the accused to observe bail or bond terms on previous occasions, likelihood of accused interfering with witnesses, the need to protect victims, child offenders, the accused person being a flight risk public order, peace or security and protection of the accused person. The situation is totally different in the instant case.

## **Analysis and Determination**

8. The only two considerations this court has to take into account in this case are whether the success has high chances of appeal and whether there are any exceptional circumstances to warrant the release of the applicant on bail pending appeal. The applicant in this case contends that he is entitled to bond pending appeal because he was on bond during the trial and that he never jumped bail. He also says he is a family man with a home of 2 wives and children and his chances of absconding are therefore minimal. He also says he is a very well-known person in his locality. He also depone in his affidavit that his continued stay in prison will adversely affect his health, name character and profession. The applicant does not however state what his profession is.

9. I have carefully read through the record, including the judgment of the learned trial Magistrate and find that contrary to what the applicant alleges, the appeal herein does not have overwhelming chances of success. Secondly the applicant has not placed before this court evidence of any exceptional circumstances that would warrant his release on bail pending appeal. The applicant simply alleges that his continued incarceration will injure his health, name, character and profession. There is no demonstration in real terms what such alleged injury would entail in terms of his health name, character and profession. In any event, now that the appellant is serving a life sentence, the chances of him absconding once released on bond cannot be ruled out.

## **Conclusion**

10. For the above reasons, the applicant's Notice of Motion dated 21.02.2017 be and is hereby dismissed in its entirety. As the appeal has already been admitted to hearing and a hearing date given the appellant shall remain in custody pending hearing of the appeal on 20.07.2017

Orders accordingly

Ruling delivered, dated and signed in open court at Kakamega this 4<sup>th</sup> day of May 2017

RUTH N. SITATI

JUDGE

In the presence of;-

.....Present in person.....for applicant

.....Mr. Juma (present).....for respondent

.....Mr. Polycap.....Court Assistant