

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

MISC. CRIMINAL CASE NO.6 OF 2017

SAMSON MAINA.....APPELLANT/APPLICANT

V E R S U S

REPUBLIC.....RESPONDENT

R U L I N G

The applicant herein is **Samson Maina** who was convicted and sentenced to 20 years imprisonment by **Hon. Wanjala** (C.M.) for an offence of defilement Contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act No.3 of 2006.

Before me is a Chamber Summons Application dated 22/3/2017, filed by Murindi Advocate on behalf of the applicant. He seeks the following prayers:

(2) That the applicant be granted bond pending hearing of Criminal Appeal No.142 of 2017;

(3) Any other orders for securing the applicant's attendance.

When the Applicant's Counsel appeared before me on 30/3/2017, he argued an application for bond pending appeal. Mr. Mutembei, the State Counsel did not oppose the application. I notice that in the Certificate of Urgency, the applicant was seeking leave of the court to file appeal out of time but that was not one of the prayers in Chamber Summons dated 22/3/2017. What is before me is a Miscellaneous Application. An application for bond cannot be brought in a Miscellaneous Application. There must be an existing substantive appeal in which such application can be made. Counsel referred to Criminal Appeal No.142 of 2017 but this court cannot establish whether the applicant had been granted leave to file appeal out of time and/or that an appeal has indeed been filed. The court is unable to determine that from the proceedings before the court.

Since the Chamber Summons seeking bond is not properly before this court, it would be a waste of court's time to consider the application for bond pending appeal in the form in which it is filed and the court hereby declines to grant the prayer for bond and strike out the Chamber Summons.

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R.P.V. Wendoh

JUDGE

Dated, Signed and Delivered at NYAHURURU this 2nd day of May, 2017.

PRESENT:

Mr. Mong'are - for prosecution counsel

Mr. Mbugua holding brief for Mr. Mutindi Advocate for applicant

Soi - Court Assistant