

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 146 OF 2016

SAMUEL NJERU MAHIUHA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the Judgment of the Chief Magistrate's Court at Nyahururu, Hon. A. W Mukenga – Resident Magistrate delivered on the 26th August 2016 in CMCR Case No. 2258 of 2013)

RULING

The Applicant **SAMUEL NJERU MAHIUHA** was convicted at the Nyahururu Law Courts for the Offence of Defilement. He had filed an appeal challenging both his conviction and sentence.

By way of a Notice of Motion dated 22/9/2016 the applicant seeks to be released on bail during the pendency of his appeal. **MR. MOTENDE** learned Stated Counsel did not oppose the application.

I have considered this application for bail pending appeal. I have also perused the record of the trial in the lower court. The applicant having been convicted by a court of competent jurisdiction is no longer entitled to the presumption of innocence and therefore cannot claim bond as a right.

The appellant submits that he suffers from epilepsy and requires regular medical treatment and medication. The applicant even as a convict is entitled to be availed medical treatment whenever necessary and is also entitled to continue with his medications whilst in prison.

At this point I am not being required to determine the merit or otherwise of the intended appeal. I do not find any merit in this application for release on bail. I therefore decline to allow this application.

The applicant will continue to serve his sentence until his appeal is heard and determined.

Dated in Nakuru this 11th day of November, 2016.

Maureen A. Odero

Judge

Court – Hearing of Appeal on 6/3/2017.

Maureen A. Odero

Judge

11/11/2016