



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 185 OF 2012

ANTONY KYALO KIMANYI ACCUSED/APPLICANT

VERSUS

REPUBLIC

(Being an appeal from the conviction and sentence of Hon. P.N. Gesora SPM delivered on 14/12/2012 in Machakos Chief Magistrate Criminal Case No. 340 of 2007)

(Before Hon. B. Thurairaja J)

R U L I N G

1. The Appellant, **Antony Kyalo Kimanyi** was convicted for the offence of unnatural offence contrary to **section 162** of the **Penal Code**.

The particulars of the offence were that on the 23/1/2007 at **Machakos Township** in **Machakos District** within the **Eastern Province** had carnal knowledge of **S B L** against the order of nature. On 14/12/12, the Appellant was sentenced to serve seven (7) years imprisonment.

2. The Appellant was aggrieved by both the conviction and sentence and appealed to this court. The Appellant subsequently filed the application dated 5/4/13 seeking to be released on bail pending the hearing and determination of the appeal.
3. The Appellant argued that his appeal has high chances of success in the light of the grounds of appeal set out in his application. It was argued that the evidence adduced by the prosecution was inconsistent and lacked credibility. The Appellant is ready to abide by the terms and conditions imposed by the court.
4. The application is opposed by the State. It was argued that it has not been demonstrated that the appeal has high chances of success. According to the State, bail is not a matter of right if there is a conviction on record and no exceptional circumstances have been shown to exist.
5. Bail pending appeal is generally a matter of the court's discretion. There is no Constitutional requirement to grant bail pending appeal. Indeed, the presumption is one of validity of the conviction and sentence imposed. See **Isaac Tulicha Guyo –vs- Republic (Criminal App. No. 16 of 2010)**.
6. The most important consideration in granting the orders sought herein is whether the appeal has overwhelming chances of success such that there is no justification of depriving the Applicant his liberty. The court can also consider if there is the existence of any exceptional or unusual circumstances (See **Dominic Karanja –vs- Republic 1986 (KLR) 612**).
7. Having carefully considered the facts of this application, I am unable to comment on the claim that

the appeal has high chances of success. There is nothing in the petition of appeal that points to the likelihood that the appeal herein is likely to succeed. This court is yet to hear the submissions on the actual appeal. No unusual or exceptional circumstances have been demonstrated to exist in this case.

8. In the premises therefore, the Appellant's application has no merits and is dismissed.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 7th day of October 2013.

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B. THURANIRA JADEN

JUDGE