



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**CRIMINAL APPEAL NO 81 OF 2011**

**GEOFFREY KIRIINYA IGWETA.....APPELLANT**

**Versus**

**REPUBLIC .....RESPONDENT**

**RULING**

1. By a notice of motion filed on 28th May 2013 the applicant moved the court for an order that the same be released on bond/bail pending the hearing of the appeal herein.
2. The application was grounded on the fact that the appeal has high chances of success, the appellant is a depression patient and physically challenged and has security for his attendance if released on bond.
3. The application is supported by the affidavit of the applicant Mr. Geoffrey Kiriinya Igweta.
4. When the application came up for hearing interpartes before me, Mr. Njue for the DPP submitted that that he was not opposed to the applicant being released on bond pending appeal save that the court ought to take into account the fact that the appellant absconded when a retrial was ordered by the court.
5. The applicant submitted when his initial appeal was allowed he was granted bond pending trial and that he attended the first trial without fail.
6. He submitted that he was arrested on 14th December 2009 at 6 am and that his first trial commenced on 17th November 2004 for an offence alleged to have been committed on 12th November 2004 and was convicted on 22nd September 2005. He therefore lodged the initial appeal and was granted bond pending appeal with the said appeal being concluded in the month of June 2008 when a retrial was ordered.
7. In an application of this nature the court is guided by two fundamental principles:

***a) The appeal has overwhelming chances of success and therefore there is no justification to deny this applicant his liberty.***

***b) Whether there are exceptional or unusual circumstances.***

8. From the proceedings before the trial court and from the charge sheet I have noted that the appellant was charged with the offence under Sexual Offences Act No. 3 of 2006 for an offence which is alleged to have occurred on 12th November 2004 before the said Sexual Offences Act was enacted and therefore this is a legal issue which if proved to be so will go to the root of the appeal herein.
9. On the issue of exceptional circumstances I have taken note of the fact that the appellant's trial from the time when he was initially charged has taken almost twenty (20) years in contravention of the appellant's rights under Article 50(e) of the constitution of Kenya 2010 which is a right to have the trial begin and concluded without unreasonable delay.

10. I have also noted that the applicant is a person with disabilities and might not be able while in custody to enjoy rights under Article 54(1) (e) of the constitution of Kenya 2010 which is right to access materials and devices to overcome constraints arising from the person's disability.
11. I therefore allow the application herein and order that the appellant be released on bond of Kenya shillings One Hundred Thousand (Ksh. 100,000/-) with one surety of like amounts or in the alternative cash bail of Kenya Shillings Fifty Thousand (Ksh. 50,000/-) pending the determination of this appeal. During the said period the appellant shall attend mention before the Deputy Registrar of this court once after every sixty days until the final determination of the appeal herewith.

Dated at Nyeri this 24th day of October 2013.

12. The first such mention being on 24th December 2013 and in such other dates.

J. WAKIAGA

JUDGE

Mr. Cheboi for the State

Appellant in person

Ruling read in the presence of the above named.

J. WAKIAGA

JUDGE