

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO. 472 OF 2012

JOYCE NYAMBURA KARIUKI.....APPELLANT

-VERSUS-

REPUBLIC.....REPODEN

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RULING

This ruling is on a Notice of Motion dated 10th September, 2013 brought under **Section 357(1) of the Criminal Procedure Code, Chapter 75 Laws of Kenya**. The Motion seeks to have the Appellant admitted to bail pending the hearing of her appeal against the conviction and sentence meted out against her by the learned magistrate in **Murang'a Chief Magistrates' Court Sexual Offence Case No. 12 of 2011**.

In the criminal case whose judgment the Appellant seeks to impugn, the Appellant was charged with the offence of attempted defilement contrary to **section 9(1)** as read with **section 9(2) of the Sexual Offences Act, No. 3 of 2006**. According to the particulars of the offence, on the 31st July, 2011 in Murang'a within Central Province, the Appellant unlawfully caused her vagina to be penetrated by the penis of CG, a child aged 16 years.

The Appellant argues that the Appeal is not only arguable but it also has overwhelming chances of success. Her counsel submitted that there was no evidence to support the offence with which the Appellant was charged. He also argued that a voire dire examination ought to have been subjected to the only independent witness who was a child of tender years. The state has conceded these arguments and in its view, the appeal is likely to succeed on those grounds.

In the Court of Appeal decision of **Dominic Karanja versus Republic (1986) KLR at page 612**, it was held that where an appeal has overwhelming chances of success, there was no justification for depriving the applicant of his liberty.

Again in the Court of Appeal decision of **Jivraj Shah versus Republic (1986) KLR 605**, the court was also of the view that if it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be urged and that the sentence or substantial part of it will have been served by the time the appeal is heard, then bail should be granted.

It appears to me, at least at this stage of the proceedings, circumstances under which bail pending appeal is usually granted as aptly illustrated by the Court of Appeal in the decisions I have cited obtain in the Appeal herein. It follows therefore that it would be unwise to suppress the appellant's liberty when she has raised in her appeal a substantial point of law whose determination may very well yield a successful appeal. Accordingly, the Appellant's application dated 10th September, 2013 is hereby allowed and the Appellant is granted bail pending the hearing of her appeal; she is realised on a bond of Kshs. 100,000 with a surety of a similar amount.

Signed and delivered in open court this 4th day of October, 2013

Ngaah Jairus

JUDGE