



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
CRIMINAL APPEAL 65 OF 2012

BERNARD GIKUNJU MURIUKI..... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

*(Being an appeal from the Conviction and Sentence by H.N. NDUNGU Senior Principal Magistrate,
Kerugoya in Criminal Case No. 29 of 2012 on 21st February, 2012)*

R U L I N G

The Appellant/Applicant has applied for bail pending appeal under Section 356 of the Criminal Procedure Code. The main grounds are:-

- 1. He was not given an option of a fine.**
- 2. The Appeal has high chances of success.**

The application is also supported by the affidavit of Mr. Ngigi the Appellant/Applicant's counsel.

The State through learned Counsel Ms. Matiru opposed the application saying there was overwhelming evidence.

The prosecution in the Court below called 4 witnesses. PW1 is the complainant and minor aged 9 years. This being a sexual offence there must be proof of age as sentence is based on age. She gave unsworn evidence and it is not clear if she knew the Applicant or not. It was at night. PW2 was not present when the incident occurred. PW3 confirmed the child had been defiled. The issue for determination was who defiled PW1. In an application of this nature, the guiding principles are:-

- 1. The overwhelming chances of success of the appeal;**

2. Existence of any unusual or exceptional circumstances; and

3. The risk of the jail term being served before the appeal is heard and determined.

I rely on the following authorities

1. JIVRAJ SHAH VS REPUBLIC [1986] KLR 605

2. DOMINIC KARANJA VS REPUBLIC [1986] KLR 612

3. MUNDIA VS REPUBLIC [1986] KLR 623

First of all I wish to point out to the Applicant that there are NO options of fines in sexual offences.

From the evidence adduced before the lower court and the totality of the circumstances, I do find that there are some substantial points of law to be argued during the Appeal. The appeal would go either way and it is only fair that the Applicant be released on bail at the point in time. I therefore allow the application and direct that the applicant be released on a bond of Shs.100,000/= with a surety in similar sum. Surety to be approved by the Deputy Registrar and Applicant to be coming to Court for Mentions until the Appeal is heard and determined.

DELIVERED, SIGNED AND DATED AT EMBU THIS 12TH DAY OF JULY 2012.

**H.I. ONG'UDI
JUDGE**

In the presence of:-

Ms. Macharia for State

Applicant present in person

Njue CC