



**REPUBLIC OF KENYA**

**High Court at Nakuru**

**Criminal Appeal 8 of 2012**

**JULIUS KIMELE ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**(An Appeal from the Judgment of Hon. W.N. Njage, Chief Magistrate against conviction and sentence in Narok Criminal Case No.501 of 2012)**

**RULING**

The Notice of Motion dated 29<sup>th</sup> May 2012 seeks that the appellant be released on bail pending the hearing and determination of the appeal. It is premised on grounds that:

- (1) The appellant was convicted and sentenced to serve a jail term on 26<sup>th</sup> April 2012 in Criminal Case No.501 of 2012.
- (2) The appellant had been in custody while the case was pending hearing and determination of the case.
- (3) The appellant has exhibited good behaviour and conduct throughout the proceedings in the trial court.
- (4) The appellant reiterates his innocence as he did not understand the language of the trial court and is in ill health.
- (5) There is no compelling reason why the appellant should not be granted bail.

The application is supported by the affidavit sworn by **KISEREMA OLE KISHOLIO**, a brother-in-law to the appellant who states that the appeal has high chances of success. At the hearing of the application, counsel urged this court to be guided by the decision on **OMARI KAMADILA JUMA V R** (2006) eKLR.

The application is opposed on grounds that there is nothing to prove that the applicant is in poor health, nor has it been demonstrated that the appeal has high chances of success because plea was properly taken, and proceedings were conducted in a language he understood.

Counsel for the State contends that if there is any ground for appeal, it will only be on sentence, and considering the nature of the offence, there aren't many options. Further that appellant has not demonstrated any special circumstances to warrant release on bail, bearing in mind that the question of appellant's innocence does not arise since he is a convict. The court is urged to consider the appellant's history – that he had once even been charged for escaping from lawful custody before being charged with the offence for which he is serving 20 years sentence. It is argued that the appellant has every motive to abscond and should not be granted bail.

The appellant was convicted of a sexual offence which attracts a mandatory 20 year imprisonment. He was in custody during trial before the lower court, so the question of his conduct cannot be a precipitating factor. Secondly he was convicted of escape from lawful custody, which makes him a high flight risk

especially taking into consideration the sentence he faces. It is not lost to this court, that the appellant is not the one asserting that he will attend court, it is his brother-in-law – so there is no personal commitment by the appellant. I have perused the trial court’s record, especially the manner in which plea was taken, my view is that this is a situation that would best abide hearing of the appeal and there aren’t any special circumstances or compelling reasons to justify releasing the appellant on bail pending appeal. The application is dismissed.

**Delivered and dated this 2nd day of November, 2012 at Nakuru.**

**H.A. OMONDI**

**JUDGE**