



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

Criminal Appeal 185 of 2005

DENIS MUTHEE CHOKERA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Denis Muthee Chokera, hereinafter referred to as the Applicant, seeks to be admitted to bail pending the hearing and determination of his appeal against conviction and sentence by the Senior Resident Magistrate Nanyuki for the offence of Defilement of a girl Contrary to Section 145 (1) of the Penal Code.

It is the Applicant's contention that his appeal has realistic prospects of success. It is also submitted that the Applicant was as student and that He was on bail during his trial in the Lower Court and he is not therefore likely to abscond.

As for the latter argument, the Applicant was on bail during the pendency of his trial in the Lower Court as that was his constitutional right which could only be taken away on exceptional grounds. The position has now changed. The Applicant is a convict who can only be released on bail if there are exceptional grounds. While it is alleged that the Applicant was a student no evidence has been tendered in support of this allegation.

With regard to the appeal filed, counsel for the applicant has demonstrated that the Applicant has an arguable appeal. However that does not necessarily show that it has high chances of success.

A perusal of the proceedings and judgment of the Lower Court shows that the appeal may not necessarily be a walk over for the Applicant. I find no exceptional grounds or any just cause to warrant the Applicant being admitted to bail. His application is accordingly dismissed.

Dated, signed and delivered this 19th day of May 2006.

H. M. OKWENGU

JUDGE



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