



PETER KAIMENYI MARANGU APPLICANT

VERSUS

REPUBLIC RESPONDENT

R U L I N G

On 9th August 2011, the applicant filed a Chamber Summons seeking the following orders:-

- 1. *That he be allowed to bond pending appeal.***
- 2. *That the Hon. Court to consider the attached affidavit and the earlier lodged grounds.***

The above application has been supported by an affidavit of the applicant who has stated that the appeal lodged had a very high chances of success. During the hearing of the application, the applicant stated that during the hearing of the case in the lower court, he had been granted bond and that he had also complied with all the conditions that had been imposed. The applicant reiterated that his appeal has overwhelming chances of success and that one of his children is still going to school. Besides the above, the applicant explained that his family does not have enough security right now. Specifically, he stated that earlier he had been given a bond of Kshs. 200,000/= with one surety.

On the other hand, the application has been opposed by the State which was represented by Mr. Motende. According to the learned State Counsel, he had filed a replying affidavit dated 20th March, 2012 and that he was relying on the same. Apart from the above, the learned State Counsel submitted that the applicant has not satisfied the court that the appeal has high chances of success. He contended that the probability of the appeal succeeding is very minimal. In addition to the above, he also referred this court to paragraph 4 of the replying affidavit and submitted that the appellant has not shown any existence of supervening circumstances such as illness or loss of job to enable the court consider the same. Apart from the above, the learned counsel also submitted that this application is defective since it has not shown the grounds on which it has been made. He concluded that it means that the application has not shown the relevant provisions of the law. He also pointed out that the said application is not dated and hence not proper. As far as paragraph 7 of the replying affidavit is concerned, he submitted that the supporting affidavit has not been affirmed. In conclusion, he submitted that this application is defective, bad in law, unfounded and misdirected. On the basis of the above, he has urged this court to dismiss the application.

This court has carefully considered the above submissions. Apart from the above, this court has also had the benefit of going through the evidence that was adduced in the lower court. In addition to the above, this court has also carefully considered the judgment which was delivered by the Chief Magistrate on 1st December 2010. No doubt the accused had earlier been charged for the offence of defilement contrary to Section 8 (1), (4) of the Sexual Offences Act No. 3 of 2006. The facts of the prosecution case

as stated in the charge sheet are as follows:-

DEFILEMENT CONTRARY TO SECTION 8 (1) (4) OF THE SEXUAL OFFENCES ACT NO. 3 OF 2006

On the 24th day of July 2010 at Kambakia Forest in Imenti North District of the Meru County intentionally caused his penis to penetrate the vagina of PK a child aged 17 years.

ALTERNATIVE CHARGE

Indecent act with a child contrary to Section 11 (1) of the Sexual Offences Act No. 3 of 2006.

After a full trial, the appellant was found guilty and convicted of the main charge. Consequently, the trial magistrate sentenced the appellant to 25 years imprisonment. Though the appellant has stated that his appeal has overwhelming chances of success, I hereby find that the position that he has taken is too optimistic. I am doubtful that the said appeal has overwhelming chances of success. Since the appeal is still pending, it would not be prudent for me to go into the details of the merits and the demerits of the same. Given the materials that have been placed before me, I hereby decline to grant the appellant bond pending appeal. However, I hereby direct that the appeal be heard on 27th November 2012 before any Judge other than the undersigned.

Those are the orders of this court.

Ruling read, signed and delivered in open court in the presence of:-

PETER KAIMENYI MARANGU - APPELLANT

MR. MOTENDE FOR STATE COUNSEL

MUGA APONDI

JUDGE

2ND OCTOBER 2012



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