REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO. 19 OF 2014

DENIS KINYUA NJERU .....……..… APPELLANT

VERSUS

REPUBLIC …….....…….....RESPONDENT

(Being an application for bail pending appeal from the original judgment and conviction in Runjenjes Criminal Case No. 72 of 2014, Hon. Obiero, Ag PM)

RULING

1. The Notice of Motion before the court is dated 24th April 2014 and is brought by the appellant who wishes to be released on bail pending the hearing and determination of the appeal. He was convicted on 15th April, 2014 for the offence of defilement contrary to **section 8(1)** as read with **section 8(3)** of the ***Sexual Offences Act (Act No. 3 of 2006)*** and sentenced to 20 years imprisonment.

2. There is no constitutional right to bail pending appeal as every conviction is lawful until set aside by the appellate court. The applicant therefore shoulders the burden for persuading the court that the intended appeal has overwhelming chances of success and that there are exceptional circumstances that warrant suspending the conviction pending appeal. These principles are now well settled. See, for example, ***Dominic Karanja v Republic*** **(1986) KLR 612** and **Chimambai v Republic (1971) E.A 343**.

3. Mr Momanyi, counsel for the applicant, attacked the judgment of the court *a quo* on several grounds. First, the age of the child was not ascertained. Second, the medical evidence did not establish penetration. Third, on the whole the evidence was insufficient to establish a conviction. He cited several cases to support his propositions; ***Benson Wambasi Nyongesa v Republic*** **(2010) eKLR**, ***Tungwa Zungumzo v Republic*** **(2011) eKLR** and ***Elijah Onguti v Republic*** **(2011) eKLR**.

4. The State, through Ms Ingahizu, opposed the application on the ground that the principles for grant of bail pending appeal had not been established. She called in aid ***Dominic Karanja v Republic*** **(Supra)** and ***Dominic Sibi Peter v Republic*** **(2014) eKLR**.

5. I have considered the proceedings and judgment and without prejudicing the appeal, I find the appeal arguable though not one with overwhelming chances of success. The applicant has not established any exceptional circumstances to warrant the grant of bail pending appeal. As the proceedings are ready, I think the appeal will be heard in short order.

6. The application is dismissed.

DATED, SIGNED and **DELIVERED** at **EMBU** this 30th day of April **2014**

D.S. MAJANJA

JUDGE

Mr Momanyi instructed by Mogusu and Company Advocates for the applicant.

Ms Ing'ahidzu, State Counsel, instructed by the Director of Public Prosecution for the State.