

**IN THE SUPREME COURT OF APPEAL**

**SITTING AT BLANTYRE**

**MISC CRIMINAL APPLICATION NO. 08 OF 2023**

*(Being Criminal Case Number 12 of 2022, Principal Registry)*

**BETWEEN**

**NGIRINSHUTI WILLIAM----- APPELLANT**

**AND**

**THE REPUBLIC----- RESPONDENT**

**CORAM: HON. JUSTICE M.C.C. MKANDAWIRE JA**

Mr Fostino Maele, of Counsel for the Appellant

Mr Gift Msume, of Counsel for the Respondent

C. Fundani, Recording Officer

**RULING**

1. This is an inter-partes summons on an application for stay of sentence and admission to bail pending delivery of judgment. The application is supported by an affidavit of Fostino Yankho Maele together with skeleton arguments filed on the 11<sup>th</sup> of July 2023. On the 4<sup>th</sup> of September 2023, the respondent filed an affidavit together with skeleton arguments in response to the application.
2. On the 21<sup>st</sup> of September 2023, both parties addressed me and all their arguments were anchored on the affidavits and skeleton arguments that were already before me.
3. The history of this matter starts like this. The appellant appeared before the Blantyre Senior Resident Magistrate charged with the offence of defilement contrary to section 138 of the penal code. The appellant pleaded not guilty to the charge but

was found guilty after full trial and sentenced to 15 years imprisonment with hard labour. The appellant appealed to the High Court. On 9<sup>th</sup> of June 2023, the Court below delivered its judgment and dismissed the appeal in its entirety. Being dissatisfied with the decision of the court below, the appellant appealed to the court. A copy of the notice of appeal has been tendered as “FM2”.

4. Pending the hearing and determination of the appeal the appellant has filed this application for consideration of bail pending the hearing of the appeal.

5. On 12<sup>th</sup> June 2023, the appellant filed an inter-partes application for bail pending appeal before the Court below. The application was considered by the Court below and it found out that there were no exceptional circumstances upon which it could grant bail pending appeal. The ruling of the Court below is exhibit “FM3”.

6. In a nutshell, the gist of this application is that the appellant feels that there was no evidence before the trial court proving the age of the victim and that there was also no evidence proving that the appellant defiled the victim as the evidence in support of that allegation was inconsistent and manifestly unreliable and therefore he is liable to be acquitted.

7. There being a possibility of an acquittal the appellant says that therefore this is an appropriate case that the court should consider granting the appellant bail pending the hearing and determination of the appeal.

8. In response to this application, the respondent says that bail pending hearing and determination of appeal is granted where there are exceptional circumstances.

9. In the present application, the respondent said that the appellant has not raised any exceptional and unusual circumstances to warrant his release pending hearing and determination of appeal.

10. The respondent is of the view that a look at the record of the lower Court shows that there was no error of the law and consequently miscarriage of justice. The conviction was arrived at with full support of well laid legal principles.

11. The respondent further submitted that a look at the totality of the evidence shows that the appellant has no chance of success on appeal.

12. In conclusion, the respondent says that there are no unusual and exceptional factors warranting the release of the appellant on bail pending hearing of the determination of appeal.

**13.** It is a settled fact that the power to grant bail pending appeal from the decision of the Court below is bestowed on the Court pursuant to section 24(1) of the Supreme Court of Appeal Act which provides:

“The Court may, if it deems fit, on the application of an appellant, admit the appellant to bail pending the determination of the appeal.”

**14.** The above Statutory position is very clear. The Court is given discretionary power to decide whether to grant bail or withhold the bail pending appeal.


**15.** My clear understanding of Section 24 (1) of the Supreme Court of Appeal Act is that whether or not the appellant will be admitted to bail pending appeal is in the discretion of the Court. What the court will look at is whether it is in the interests of justice.

**16.** I have looked at the present application before me. The appellant has fundamentally based his arguments on the weak and inconsistent evidence available. The appellant has also referred to the issue of evidence of pedigree which the Court below had invoked.

**17.** Having given the matter the best of its scrutiny, I find that the appellant is inviting me to decide fundamental issues of the appeal at this point. I have read the judgment of the Court below. I am afraid to say that I do not agree with the appellant’s assertion that there is weak and inconsistent evidence. The evidence and judgment on record should be read in total and not in isolation.

**18.** I therefore dismiss this application in its entirety.

**MADE** this 19<sup>th</sup> day of October 2023 at Blantyre.



M.C.C. Mkandawire

**JUSTICE OF APPEAL**