

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

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**CORAM: HON. JUSTICE A. TWINOMUJUNI, JA**

**[SINGLE JUSTICE]**

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**MISCELLANEOUS APPLICATION NO.099 OF 2009**

**FRANK IGA.....APPLICANT**

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**V E R S U S**

**UGANDA.....RESPONDENT**

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**[Arising from Criminal Appeal No.150 of 2009]**

**R U L I N G:**

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This is an application for bail pending appeal. It is stated to be brought under S.40 (20 of the Criminal Procedure Code and the Judicature (Criminal Procedure) (Applications) Rules S.1 13-8. As a background to this application, a short history of the case is called for. The applicant was charged in Nakawa Chief Magistrates Court of two offences relating to smuggling un-customed goods contrary to the provisions of the East African Community Management Act (EACMA) 2004. This was on 16/4/2009. He pleaded guilty and was convicted on his own plea of guilt and sentenced to 12 months imprisonment. In addition, the learned Chief Magistrate ordered forfeiture of all the goods which had been seized including the lorry in which they were being transported. Apparently the applicant was not happy with

the forfeiture order. He filed **Criminal Appeal No.21 of 2009 Frank Iga vs Uganda**. On 25<sup>th</sup> May 2009, the High Court summarily dismissed the appeal on the grounds that:-

- (a) The Notice of Appeal did not conform to the law.
- 5 (b) No Memorandum of Appeal was filed.
- (c) Fees for lodging the appeal were not paid.

On 5<sup>th</sup> June 2009 counsel for the applicant and counsel for the respondent appeared before His Worship Olesen Thaddeus, the Assistant Registrar Nakawa High Court. Mr. Okuku  
10 learned counsel for the applicant stated:-

**“We have consented with my colleague that this application [Misc. Appl. No.183/09] be allowed. I request for 7 days to submit a memo and Notice of Appeal and serve them on my counterpart.”**

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Mr. Muguwe who appeared for the respondent stated that, that was the position. The court then made this order:-

**“Consent between the parties endorsed. Let counsel for the applicant file a  
20 Notice and Memorandum of Appeal and serve them within agreed time.”**

Within the next 7 days, Criminal Appeal No.24 was filed, fees were paid and the documents were served on all relevant parties. This appeal came up for hearing on 2<sup>nd</sup> July 2009 before Hon. Justice Murangira in presence of Mr. James Okuku counsel for the applicant and Mr.  
25 George Okello, Legal Officer URA, for the respondent. The applicant was present. Before anyone could say anything, the court made this order:

**“Court:**

**On perusal of the court file, I found that on 26/6/2009, I dismissed Criminal Appeal No.21 of 2009. This new appeal is brought again to determine the  
30 matters in the appeal I had dismissed. This practice should not be allowed at all.**

**In the circumstances, the appeal No.24 of 2009, Frank Iga vs Uganda is dismissed pursuant to section 32 of the Criminal Procedure Code Act, Cap.116 Laws of**

**Uganda. Reasons for dismissal of this appeal will be delivered on 22<sup>nd</sup> July 2009 at 9.00 am.”**

As I write this ruling [12.08.2009] I am not aware whether the ruling has been delivered. On 5 15<sup>th</sup> July 2009 the applicant lodged in this court a Notice of Appeal against the ruling of the High Court at Nakawa dated 2<sup>nd</sup> July 2009. It was registered as Criminal Appeal No.150 of 2009. Meanwhile the applicant filed this application for bail pending the determination of the appeal to this court. The application, which is by Notice of Motion, contains the following grounds said to be the basis of the application:-

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**“1. That the applicant has lodged an appeal against his conviction and sentence by way of notice of appeal which appeal has not been heard or disposed of.**

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**2. Some of the grounds in the notice of appeal may necessitate in addition making a reference to the Constitutional Court under the Judicature (Interpretation of the Constitution) (Procedure) Rules S.1 13-12 Volume XIV subsidiary legislation page 327 at page 328.**

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**3. That the applicant was jailed for 12 months from 16/4/2009 and has already served three months to serve on remission of the sentence.**

**4. That by the time the constitutional aspect together the substantive appeal are determined by the Constitutional Court and the Court of Appeal respectively the applicant may already have completed serving the sentence.**

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**5. That the applicant is a Ugandan citizen by birth and descent and has two permanent residences within the jurisdiction of this Honourable Court.**

**6. That the applicant has sound sureties and shall not abscond if released on bail.**

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**7. That the applicant is a bonafide businessman-cum-driver with a family who will not abscond if released on bail.**

**8. That it is proper and just that this application may be allowed.”**

The motion is accompanied by an affidavit of the applicant explaining why he believes he is deserving of bail pending determination of his appeal. The respondent

also filed an affidavit in reply deposed to by Mr. Muliisa Peter said to be a Manager Prosecution employed with Uganda Revenue Authority in which he contends that the application for bail is baseless as the so called appeal has no chances of success. He invited me to dismiss the same.

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Mr. James Okuku, learned counsel for the applicant and Mr. George Okello counsel for the respondent made long submissions in support of their respective positions in the bail applications. I have carefully studied all the documents filed by them and their submissions. They both rely on the Court of Appeal decision of **Teddy Sseezi Cheeye vs Uganda Misc. Criminal Appl. No.37/2009** and the Supreme Court case **Arvind Patel vs Uganda**, Criminal Application No.1 of 2003. In the Supreme Court case, which was followed by this court in **Cheeye** case, the court laid a number of considerations that should apply to an application for bail pending appeal which are:-

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- “(i) the character of the applicant;**
- (ii) whether he or she is a first offender or not;**
- (iii) whether the offence of which the applicant was convicted involved personal violence;**
- (iv) the appeal is not frivolous and has a reasonable possibility of success;**
- (v) the possibility of substantial delay in the determination of the appeal and**
- (vi) whether the applicant has complied with bail conditions granted before the applicant’s conviction and during the pendency of the appeal.”**

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While learned counsel for the applicant strongly submitted that all these conditions were fulfilled in this application, counsel for the respondent argued that none of them existed. I will now proceed to assess the merit of these submissions.

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(i) Character of Applicant:

The applicant did not seek to rebut the assertion of the respondent that he was, in 2004, arrested for smuggling goods and was fined Ug.shs.10,000,000/=

[Ten million only] by URA. However his counsel argues that URA is not a court of law and that this is one of the grounds of appeal to be decided in this court that the matter should not have been taken into account when sentencing him. This will, however, arise if the substantive appeal against the decision of the Chief Magistrate is heard by the High Court. The appeal in this court is only against summary dismissal. However, to avoid prejudicing the issue, I will not decide this consideration in favour or against anyone.

(ii) Whether applicant is first offender or not:

Because of the reasons I have given in (i) above, I propose not to pronounce myself on this consideration.

(iii) The appeal is not frivolous and has a reasonable possibility of success.

The appeal [Cr. Appeal No.21 of 2009] was dismissed on the grounds that no grounds of appeal were disclosed and that it did not follow the law. I do not have the benefit of seeing the documents which were filed in that appeal, as they are not on this record. This was dismissal on technical grounds. Subsequently, the parties agreed to late filing of the appeal before the Registrar of the High Court as a result of which **Cr. Appeal No.24 of 2009** was filed. The High Court judge again dismissed it because he had already dismissed a similar appeal in **Cr. Appeal No.21 of 2009**. He did not comment on the correctness or otherwise of the fact that the appeal was filed by consent of the parties and following the order of the Registrar of the Court. Yet the applicant seemed to have genuine grievances namely:-

- (a) The omnibus way the magistrate treated the plea.
- (b) The passing of an omnibus sentence.
- (c) The forfeiture of the lorry without giving the applicant opportunity to be heard.
- (d) Taking into account a previous “**conviction**” by URA.

5 These, and possibly more, are the matters that the High Court will have to consider at an appropriate time. This court will have to consider whether it was proper to dismiss such an intended appeal on a technical ground or in such a summary manner. The right to appeal is so important that everything possible should be done not to frustrate it lightly. In my view, the appeal No.24 of 2009 is not frivolous and its chances of success cannot be just dismissed. In my view, this consideration is present.

10 (iv) The possibility of substantial delay in determination of the appeal.

15 The Court of Appeal of Uganda/Constitutional Court of Uganda is a very busy court. It is loaded with backlogs in thousands of appeal both criminal and civil. At the same time there are many constitutional matters waiting urgent attention by the court. The applicant was sentenced to 12 months imprisonment. He still has 7 months to go. Given that he could earn remission and be released earlier, the possibility of him leaving prison before his appeal is heard is very real. If he won the appeal to this court and was allowed to pursue his appeal before the High Court, if he won that too, it would be extremely unjust if he has finished serving the whole sentence.

20 In my humble views, there is a strong possibility that there will be a substantial delay in determining the applicants appeal.

25 (v) Whether the applicant has complied with bail conditions granted before the applicants conviction and during pendency of the appeal.

30 This condidititon is not applicable to this case. The applicant was sentenced on the day he appeared in court on his plea of guilty. He has never been granted court bail before.

In **Arvind Patel Case** (supra) it was stated that the considerations discussed above do not all have to be present in every bail application. A combination of two or more of them could be sufficient. In this case I find that the appeal is

not frivolous and the possibility of its success is quite good. There is also a high possibility of a substantial delay in the determination of the appeal.

5 Learned counsel for the respondent raised the prospect that the applicant has no well known place of abode or any particular place where he can be found. He has two wives, one in Busia and another in Kampala and a home in Kayunga. The exact location in those places is not given. The possibility that he could keep on moving from place to place to evade the law could not be ruled out. Mr. Okuku, counsel for the applicant submitted that having many wives was in favour of the applicant as he was not likely to abscond and leave two wives and  
10 many children behind.

After taking into consideration all matters that should be properly taken into account, I hold the view that the applicant is a deserving case for release on bail pending appeal. He is a stable person in society with two wives and eight children. His addresses are easily  
15 ascertainable. It is remarkable that for a person working in the boarder town of Busia, he has never bothered to obtain a passport which clearly shows that running away to other countries is not in his nature. He has got sound sureties [Three of them]. He has made out a case under the considerations in **Arvind Patel vs Uganda** (supra). I therefore, order that the appellant be granted bail pending appeal on the following conditions:-

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- (1) He will deposit it in this Court Ug. Shs.5,000,000/ cash. [Five million only].
- (2) His three sureties, already recorded with their particulars in these proceedings, to sign a bond of Uf.shs.20,000,000/= [Twenty million shillings only] not cash.
- (3) The applicant to report to the Registrar of this Court every 1<sup>st</sup> and last Mondays of  
25 each month.
- (4) The Registrar should consider fixing this appeal for hearing as soon as is possible and practicable.

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Dated at Kampala this 20<sup>th</sup> day of August 2009.

Hon. Justice Amos Twinomujuni

**JUSTICE OF APPEAL.**

