

THE REPUBLIC OF UGANDA

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA CRIMINAL
MISCELLANEOUS APPLICATION NO. 82 OF 2017 (Arising from Criminal Appeal
No. 290 of 2017)**

MUBBALE PETER ::: APPELLANT

VERSUS

UGANDA ::: RESPONDENT

**CORAM: HON. MR. JUSTICE STEPHEN MUSOTA, JA
(Single Judge)**

RULING

This application seeks for orders that the applicant, Mubbale Peter, be granted bail pending the hearing and determination of Criminal Appeal No. 290 of 2017 pending before this court.

The application was brought under S. 14 and 15 of the Trial on Indictment Act, Section 40(2) of the Criminal Procedure Code Act Cap 16 and Rules 6(2) (a), 43 and 44 of the Judicature Court of Appeal Rules Directions SI 13-10.

The applicant was charged and convicted of the offences of Embezzlement C/S 19(a) and (d) (i) (ii) of the Anti-Corruption Act, Fraudulent False accounting C/S 23 (b) of the Anti-Corruption Act and Theft C/S 254(1) and 261 of the Penal Code Act and was sentenced to 5 years imprisonment and ordered to compensate the complainant 262,269,710/=. Being dissatisfied with the judgment, the applicant appealed to this court and also filed this application for bail pending appeal on the following grounds;

1. The applicant has filed an appeal vide criminal Appeal No. 290 of 2017 against both conviction and sentence which appeal is pending before this honorable court.
2. That the appeal is neither frivolous nor vexatious and has a high likelihood/possibility of success.
3. That there is a possibility of substantial delay in prosecuting the appeal.

4. That the offence with which the applicant was convicted did not involve personal violence.
5. The applicant has substantial sureties ready and willing to act as aforesaid.
6. The applicant is 55 years of advanced age.
7. The applicant is of good character and a first time offender.
8. The applicant has a fixed place of abode at Luzira Zone 6 in Kampala district within the jurisdiction of this Honourable court.
9. That it is in the interest of justice that bail be granted to the applicant pending the hearing and determination of the said appeal.

At the hearing of the application, Mr. John Isabirye appeared for the applicant while Ms. Faith Turimanya appeared for the respondent.

Counsel for the applicant submitted that Section 132(4) of the Trial on Indictment Act gives this court jurisdiction to hear this application. It states that:

(4) Except in a case where the appellant has been sentenced to death, a judge of the High Court or the Court of Appeal may, in his or its discretion, in any case in which an appeal to the Court of Appeal is lodged under this section, grant bail, pending the hearing and determination of the appeal.

He also made reference to Section 40(2) of the Criminal Procedure Code Act which reads;

(2) The appellate court may, if it sees fit, admit an appellant to bail pending the determination of his or her appeal; but when a magistrate's court refuses to release a person on bail, that person may apply for bail to the appellate court.

Counsel argued that in the authority of Gregory Mugisha Vs Uganda which is criminal reference number 179 of 2011, the

major issue in that case is that whereas a convict may have lost his presumption of innocence on the conviction, what is important in applications of this nature is that such a person should be considered as having his rights not extinguished because he still has a right of appeal. Further, that the applicant has a fixed place of abode in Luzira and on record is an introduction letter from the LC1 Chairperson.

Counsel cited the case of David Chandi Jamwa Vs Uganda Criminal Application No. 20 of 2011 in re-stated the guidelines in Arvind Patel Vs Uganda Supreme Court Criminal Application No. 1 of 2003 in bail pending appeal. These are;

- (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.

Counsel submitted that the applicant satisfies all of the above conditions. Counsel relied on **Akuta Arupot Justine Vs Uganda criminal appeal number 61 of 2013** to advance his argument that the applicant is of advanced age being 55 years.

The applicant presented three sureties namely; Gambula Kanku Alice aged 45 and a wife to the applicant who also stood surety in the High Court. The 2nd surety is Mr. Waira Ramathan aged 51, a senior accountant with the Ministry of Works and Transport and is introduced by a letter of the LC1 of Nansana East. The 3rd is Mr. Ojara Godfrey aged 50 and works with National Water and Sewerage Corporation. He has been introduced by the LC1 chairperson of Mutungo Parish where he is resident.

In conclusion, counsel prayed that this application be granted and noted that a title deed Plot 1416 Block 236 land at Bweyogerere Kyadondo, belonging to the applicant had been deposited in the Anti-Corruption Court and bail money amounting to seven million shillings (7,000,000/=) are still in the Court.

In reply, counsel for the respondent opposed this application. She argued that the presumption of innocence does not arise in this case where the applicant is already a convict. On the issue of fulfilling the bail conditions in the High Court, counsel argued that this was only because the applicant had not been convicted and following a conviction in the High Court, he is likely to abscond from jurisdiction. In addition, that the applicant was convicted for having taken a colossal sum of money and as such, bail should be denied.

Before I delve into merits of this application, I must emphasize that bail and particularly bail pending appeal is granted at the discretion of court. There is no automatic right to bail and the right cited under Article 23(6) of the constitution is limited to the right to apply for bail. Court is seized with the discretion to grant or not to grant bail. I must note that this discretion must be exercised judiciously and each case must be determined on its own merits.

Whereas the case of John Kaye Vs Attorney General Constitutional Application No. 25 of 2012, having cited Francis Ogwang V Uganda Criminal Misc. Application No. 25 of 2003

considered the age of 50 as advanced age was good law, it is my considered view that the life expectancy today in Uganda has increased and 50 years would no longer, in my view be advanced age. According to the latest World Health Organization data published in 2015, life expectancy in Uganda is 60.3 male, 64.3 female and total life expectancy is 62.3. In this case, the applicant

being 55 years of age would not necessarily qualify him to be of advanced age. It is my considered view therefore that an applicant should be regarded to be of advanced age at 60 years.

The circumstances of bail pending appeal present a peculiar scenario since the applicant is no longer wholly shielded by the presumption of innocence under Article 28 of the constitution. I will be guided by the principles in **Arvind Patel Vs Uganda** (Supra). It has been observed while making a distinction between an application for bail pending trial and an application for bail postconviction.

An applicant for bail pending appeal bears the burden of proving that there are exceptional reasons to warrant his or her release on bail. While factors like character of the applicant and whether he or she is a first offender or not maybe taken into account, they cannot be said to be exceptional reasons for release of a convict/appellant on bail pending appeal. This court without the record of proceedings of the lower court would not be able to tell as to whether or not the appeal has chances of success. See **Kyeyune Mitala Julius vs. Uganda Supreme Court criminal application number 9 of 2016** in which Justice Mwangusya held that it is impossible to gauge the success of the appeal in the absence of the record of proceedings.

In the instant application I am persuaded that the applicant fulfills the conditions set out above for grant of bail pending appeal. I also note that he complied with bail conditions in the High Court Anti- Corruption Division and deposited a title deed and 7,000,000/= . It not clear when his appeal will be heard. He is likely to serve a . substantial part of his sentence before the appeal is heard.

In the result, the applicant is granted bail on the following terms; • . ,,,

1. He will deposit a cash bail of 20,000,000= QCeirMillion) in this ^ Court in addition to the 7,000,000/= deposited in the High Court.

2. The Land title of Plot 1416 Block 236 land at Bweyogerere Kyadondo shall remain in the court's custody until the appeal is disposed of.
3. The three persons presented to Court as sureties are approved and they will each execute a bond of Shs. 5,000,000= (five million) each, not cash and deposit the same with this Court.
4. The applicant shall report to the Registrar of this Court on every last working day of the month starting from the 31st May 2018 for extension of his bail until his appeal is heard and disposed of or until such further or other orders of this Court.

I so order.

Dated at Kampala this 16th day of May 2018

HON. JUSTICE STEPHEN MUSOTA, JA