

5 conviction and sentence. He then filed this application seeking for bail pending
appeal.

The grounds of the application are set out in the notice of motion as follows;-

1. *That the applicant was charged and convicted with the offence of
aggravated defilement c/s 129(4) (a) of the Penal Code Act which is a
10 bailable offence before this Honorable Court.*
2. *The applicant lodged an appeal against his conviction vide Criminal Appeal
No.304 of 2017 and has a high probability of success.*
3. *The applicant is a first time offender who still believes that he is innocent
and has strong desires of proving so during the hearing of his appeal.*
- 15 4. *That the applicant has a right to apply for bail and this Honorable Court has
the discretion to grant the bail pending the hearing of the applicant's appeal.*
5. *That the applicant is a known case of PTB with allergic Bronchitis with
Asthmatic components which is a chronic condition and it can be worsened
by prisons conditions.*
- 20 6. *That the applicant has a fixed place of abode, substantial sureties all
residents within the jurisdiction of this Honorable Court.*
7. *That the applicant will not abscond from the jurisdiction of this Honorable
Court if released on bail.*

The application is supported by an affidavit deponed by the applicant, Chelogoi
25 Simon expounding on the grounds of appeal reproduced above and as such, I
will not belabor to reproduce them.



5 At the hearing of the application, Mr. Jurugo Isaac appeared for the appellant while the respondent was represented by Ms. Annet Namatovu, Senior State Attorney.

Ms. Namatovu prayed that Court expunges her earlier affidavit filed on 13th December, 2018 from Court Record because the applicant had filed a fresh
10 application on 17th January, 2018. She requested Court to proceed without an affidavit in reply and the request was granted.

Counsel for the appellant submitted that the offence for which the applicant was charged is bailable, he was a first offender and that the appeal has a high probability of success. He contended that at page 9 of the Record of Appeal which
15 is attached to the affidavit of the applicant, the witness contradicted herself on who had defiled her. He relied on ***Lt. Jonas Ainomugisha V Uganda, Supreme Court Criminal Appeal No.19 of 2015*** where Court acquitted the appellant after finding that there was a contradiction in the testimony of the witness.

Counsel further submitted that the applicant suffers from Pulmonary
20 Tuberculosis (PTB) with allergic Bronchitis with Asthmatic components which is a chronic condition that can be worsened by prison conditions. He invited Court to look at the report marked as annexure "C" in which Dr. Kakoraki Alex, the Ag Medical Superintendent – Murchison Bay Prison concluded that the applicant's medical condition could be worsened by the conditions in prison.

25 Counsel presented 3 sureties whom he contended were substantial with the following particulars;



- 5 1. Mr. Chekwik Alfred, 66 years old, biological father of the applicant, a
resident of Kapmweyet Village, Kitany Parish in Kween District and holder
of National ID No. CM5210410103MJ. He is a farmer.
2. Moses Chemunumwa, 31 years old, a brother to the applicant, a resident
of Kapmweyet Village, Kitany Parish in Kween District and holder of
10 National ID No. CM87104100E3MA.
3. Satya Job, 41 years old, Brother In-law to the applicant, a resident of
Kaplongon Village, Tumboboi Parish in Kapchorwa District and a holder
of National ID No. CM78014102904F. He is a farmer.

Counsel submitted that the applicant has a fixed place of abode within the
15 jurisdiction of this Honorable Court. He relied on the introduction letter from
Kitany Parish in Kween District signed by the LC1 Chairman confirming that the
applicant was a resident of that area and prayed that Court grants the applicant
bail pending the determination of his appeal.

In reply, Ms. Namatovu submitted that the applicant was convicted of a serious
20 offence and had not proved any exceptional or unusual circumstances to warrant
the grant of this application. She added that the medical report that the applicant
relied on did not state that the applicant's health could not be managed by the
prison authorities.

She further submitted that the offence for which the applicant was charged of
25 involved personal violence because the applicant used force in defiling the victim.
She prayed that the application be dismissed.



5 I have considered the submissions of both counsel and the authorities relied on.
**Section 132(4) of the Trial on Indictments Act and section 40(2) of the
Criminal Procedure Code Act** empower this Court to hear applications of this
nature. The conditions upon which this Court may grant an application for bail
pending appeal have been discussed in numerous cases. See **Arvind Patel V**
10 **Uganda, Supreme Court Criminal Appeal No.01 of 2003.**

Counsel for the appellant submitted that the offence for which the applicant was
charged is bailable, he is a first offender and the appeal has a high probability of
success.

It is not in dispute that the applicant is a first offender as there is no evidence
15 that has been adduced by the respondent to the contrary.

On the likelihood of success of the appeal, I have had the opportunity to study
the appeal file with the Record of Proceedings of the lower Court. There appears
to be an issue of identification whether the defiler was Chelogoi Simon, the
applicant or Chebet Simon. This is an arguable ground with a possibility of
20 success.

Counsel submitted that the applicant suffers from PTB with allergic Bronchitis
which has Asthmatic components. That this is a chronic condition that can be
worsened by prisons conditions.

I have looked at the medical report marked as annexure "C" attached to the
25 affidavit of the applicant. The medical report indicates that the applicant is a
known case of PTB with allergic Bronchitis with Asthmatic components which
is a chronic condition that can be worsened by prison conditions. The said letter



5 was signed off by Dr. Kakoraki Alex, the Ag Medical Superintendent – Murchison Bay Prison.

This is proof of existence of an exceptional circumstance which meets the requirements of section 15(3) of the Trial on Indictments Act.

Regarding the applicant's place of abode, the applicant presented an
10 introduction letter from the LC1 Chairman of Kitany Parish in Kween District confirming that he was a resident of that area and the LC1 Chairman attested to knowing him.

The applicant presented 3 sureties whose particulars I have taken into consideration. The said sureties are substantial and willing to ensure the
15 presence of the applicant in Court as and when they are required to do so.

I find that the applicant has satisfied some of the conditions set out in Arvind Patel (supra). I therefore grant the application and release the applicant on bail pending the determination of his appeal on the following conditions;

1. Payment of cash bail of UG shs 5,000,000 (Five Million Shillings Only) by
20 the applicant into this Court.
2. The applicant shall report to the Registrar of this Court every month at 9am, beginning on 15th February, 2019 until the disposal of his appeal or until further orders of this Court.
3. All the sureties shall ensure that the applicant complies with the
25 conditions of his release on bail pending appeal and attend Court whenever he is required to do so.



- 5 4. The said sureties shall each bind themselves by signing a bond of Ug shs.
10,000,000/= (Ten Million Shillings) not cash.
5. A breach of any of the above conditions shall render the bail pending
appeal herein granted to the applicant liable to automatic cancellation.

The Registrar of this Court is directed to fix the appeal for hearing at the next
10 convenient criminal session.

I so order.

Dated at Kampala this9th.....day ofApril..... 2019

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HON. MR. JUSTICE CHEBORION BARISHAKI

JUSTICE OF APPEAL

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