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**HE REPUBLIC OF UGANDA**

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

**CRIMINAL APPLICATION NO. 211 OF 2019**

*(Arising from Criminal Appeal No. 355 of 2019)*

**OBINA BOSCO**

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**KIDEGA ALBINO**

**OKUMU MICHEAL**

.....**APPLICANTS**

**VERSUS**

**UGANDA:.....RESPONDENT**

**CORAM: HON. MR. JUSTICE CHEBORION BARISHAKI, JA**

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**(SINGLE JUSTICE)**

**RULING**

This is an application by way of Notice of Motion in which the applicants seek the following orders;-

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- a) That the applicants be released on bail pending the determination of their appeal No.355 pending before this Court.*
- b) That this Court sets any terms and conditions to the applicants.*
- c) That the cost of this application be borne by the applicants.*

5 The background to the application is that the applicants were charged of various offences and tried by the Grade 1 Magistrate of Patongo in Agago district. They were acquitted of the said charges upon which the state appealed to the High Court of Uganda at Gulu and were convicted of 15 counts to wit; robbery on count 1 contrary to section 285 and 286 of the Penal Code Act and sentenced to  
10 10 years imprisonment and each convict ordered to pay compensation of 50,000/= to the victim; two counts of malicious damage to property contrary to section 335 (1) of the Penal Code Act, sentenced to 3 years imprisonment and each convict ordered to compensate the victim 1,000,000/=; six counts of wrongful confinement contrary to section 248 of the Penal Code Act and  
15 sentenced to 9 years imprisonment on counts 3,4,5,6,7 and 9; three counts of assault contrary to sections 235 of the Penal Code Act and sentenced to 3 years imprisonment on counts 11 and 13 and to pay compensation of 150,000/= to each of the victims; three counts of doing grievous harm contrary to sections 236 of the penal code act and sentenced to 5 years imprisonment on count 10.

20 Being dissatisfied with the decision of the High Court, the applicants lodged an appeal in this Court jointly vide Criminal Appeal No.355 of 2019 against both the conviction and sentence. They subsequently filed this application for bail pending appeal.

The grounds of this application are set out in the Notice of Motion as follows;

- 25 1. *That the applicants were convicted and sentenced in 15 counts by the High Court of Uganda at Gulu arising from an appeal by the state from the*

- 5            *decision of Patongo Magistrate Grade One Court and have been in custody since 30<sup>th</sup> August 2019 to date.*
2. *That the applicants have appealed before this Honourable Court against both conviction and sentence.*
3. *That the applicants were on bail during the whole of their trial before the*  
10            *Magistrate Grade One of Patongo until they were acquitted and exhibited very good character and faithfully complied with all the bail terms until their acquittal.*
4. *That the applicants responded to the High Court of Uganda at Gulu upon Court summons and attended the appeal until their conviction and sentence*  
15            *without absconding to attend Court.*
5. *That the applicants appeal is not frivolous and has a very high likelihood of success.*
6. *That the applicants appeal may delay from being heard since the applicants advocate requested for the record in writing and has never been availed to*  
20            *her to date.*
7. *That the applicants appeal is on the matter of law and is most likely to succeed.*
8. *That the 2<sup>nd</sup> and 3<sup>rd</sup> applicants are of advanced ages and their stay in prison shall jeopardize their health.*
- 25            9. *That the applicants have permanent places of abode at Patongo sub-county Agago District within the jurisdiction of this Court and are willing to abide by the conditions of bail imposed by this honourable Court.*

5        10.        *That the applicants have no previous records of convictions and have  
no criminal case pending against them in any courts of law.*

11.        *That the applicants have substantial sureties who shall ensure that  
the applicants shall attend their appeal hearing as and when necessary.*

12.        *That the applicants are first offenders.*

10        The application is supported by 3 affidavits deponed to by the applicants  
expounding and repeating the grounds of this application and as such I will not  
belabour to reproduce the same.

No affidavit in reply was filed by or on behalf of the respondent.

At the hearing of the application, the applicants were represented by Ms. Alice  
15 Akello Latigo while Mr. Charles Bwiso, Senior State Attorney appeared for the  
respondent.

Counsel for the applicants submitted that the appeal is not frivolous and has  
reasonable probability of success. She contended that the applicants were not  
satisfied with their conviction and sentence before the High Court of Uganda at  
20 Gulu and have on several occasions requested for the record of proceedings  
through letters to have their appeal heard but the same has not been availed to  
date.

Counsel further submitted that the applicants were granted bail by the  
Magistrate Grade 1 of Patongo from 2014 to 2016 when they were acquitted and  
25 they complied with the bail terms.

5 Counsel submitted that due to the busy schedule of this Court, there may be a delay in hearing the applicants appeal. She added that there was no clear indication as to when the appeal is likely to be heard by this court because even after numerous attempts to secure the record of proceedings of the lower Court, the same has not been secured to date. According to counsel, the applicants were  
10 sentenced to 3 years and 5 years on some counts, it is likely that they will serve the sentence or substantial part of it and this would render the appeal nugatory.

Counsel further submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> applicants are of advanced ages. The 2<sup>nd</sup> applicant, Kidega Albino being 56 years old while the 3<sup>rd</sup> applicant, Okumu Micheal is 54 years old.

15 Counsel submitted that the applicants have fixed places of abode at Patongo Sub-county in Agago District within the jurisdiction of this Court and are willing to abide by the terms set by this Court.

She submitted that the applicants were first offenders with no record of previous conviction and therefore should be released on bail.

20 Counsel submitted that each of the applicants had 2 substantial sureties and their particulars are as follows;

For the 1<sup>st</sup> applicant, Obina Bosco:

1. Mr. Oryem Micheal, 25 years old, a boda boda rider and a resident of Aloii Forest Wars, Patongo Sub-County in Agago District and a holder of  
25 National ID NO. 017830641 NIN CM94111104AXGF.

- 5 2. Mr. Labedo Silas, 37 years old, an uncle to the applicant and a Senior Data Engineer with UNDP. He is a resident of Nakitokolo Cell, Kisozi Ward, Kyengera Town Council in Wakiso District. He is a holder of National ID No. 019326262 NIN CM82111106QD8G.

For the 2<sup>nd</sup> applicant, Kidega Albino:

- 10 1. Okot George Stephenson, 44 years old, a nephew to the applicant and a primary teacher at Modege Primary School in Patongo Town Council, Agago District. He is a resident of Odokonyero Kadyang, Lukwangole Parish, Patongo Sub-County in Agago District and a holder of National ID No. 003244317 NIN CM751111008J7K.
- 15 2. Akena Wilfred Owot, 66 years old, a brother to the applicant and a Medical Doctor TMR TAZ Medical and rescue international hospital. He is a resident of Kitetikka L.C.1 Zone, Masooli Parish, Kasangati Town Council in Wakiso District and a holder of National ID No. 000111568 NIN CM631111005Y0A.

20 For the 3<sup>rd</sup> applicant, Okumu Micheal;

1. Ocen Alfonse, 42 years old, a son to the applicant and a resident of Alo East Ward, Lukwa- Ngole Parish, Patongo Sub-County, Agago District. He is a holder of National ID No.017830627 NIN CM77111102WKUA.
- 25 2. Anek Susan Nowell Ongom, 60 years old, a daughter to the applicant and a retired teacher and currently the President of Uganda Netball Federation. She is a resident of Kirombe North "B", Akwonyo Parish, Adyel Division,

5 Lira Municipality in Lira District and a holder of National ID  
No.019665795 NIN CF591111010VWE.

Counsel for the Applicants submitted that she had carefully explained to the  
sureties their roles which they understood.

She prayed that this Honourable Court grants the Applicants bail pending the  
10 hearing and determination of their Appeal No. 355 of 2019.

In reply, counsel for the Respondent opposed the application. He submitted that  
the offenses for which the applicants were charged of are serious in nature and  
there are high chances of the applicants absconding from the jurisdiction of this  
Honourable Court.

15 Counsel further submitted that there was no indication that the applicants  
appeal is likely to take long without being heard. In counsel's view, the applicants  
have not been vigilant enough to pursue their appeal.

Counsel further submitted that it was not clear whether the applicants had fixed  
places of abode because there were no introductory letters from the LC1 office.  
20 Further that the sureties come from diverse areas and for that reason they will  
not be able to carry on their roles as required by this Court once the applicants  
are granted bail pending the determination of their appeal.

Counsel prayed that this application be dismissed and the appeal fixed for  
hearing.

5 In rejoinder, counsel for the applicants submitted that the applicants had averred in their affidavits in support of the application that they had fixed places of abode and where granted bail in the lower Court for which they never absconded. She reiterated her earlier prayers.

I have considered the grounds of the application, the submissions of both  
10 counsel for and against this application for which I am grateful. I find it pertinent to cite some of the provisions of the law governing bail pending Appeal to this Court.

**Article 23(6) (a) of the Constitution** provides that;

15 *“A person is entitled to apply to the Court to be released on bail and the Court may grant that person bail on such conditions as the Court considers reasonable.”*

**Section 132 (4) of the Trial on Indictments Act** provides;

20 *“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 her 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”.*

**Section 40(2) of the Criminal Procedure Code** reads:

*“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*



5           to release a person on bail, that person may apply for bail to the appellate court”.

The power to grant bail pending Appeal is therefore, discretionary and that discretion should be exercised judiciously taking into account all circumstances surrounding a particular case.

10       The Supreme Court in **Arvind Patel V Uganda SC Criminal Application No. 1 of 2003** set out guidelines to be applied while considering applications of bail pending appeal. Oder, JSC (RIP) held thus:

15           *“In my view, considerations which should generally apply to an application for bail pending appeal as indicated by the cases above referred to may be summarized as follows:*

- i.    *the character of the applicant;*
- ii.   *whether he/she is a first offender or not;*
- iii.   *whether the offence of which the applicant was convicted involved personal violence;*
- 20    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.*

5           vi.    *whether the applicant has complied with bail conditions granted  
                  after the applicant's conviction and during the pendency of the  
                  appeal (if any).*

*In my view it is not necessary that all these conditions should be  
                  present in every case. A combination of two or more criteria may be  
10           sufficient. Each case must be considered on its own facts and  
                  circumstances”.*

It was submitted for the applicants that they were first offenders with no record  
of previous conviction and therefore should be released on bail. I am satisfied  
that the applicants have proved that they are first offenders as there is no  
15   evidence to prove that they have any criminal record of a previous conviction.

Regarding the possibility of delay in hearing and disposing of the appeal, I have  
taken into consideration the submissions of counsel for the applicants that there  
is a likelihood of delay in hearing and disposing of the applicants appeal because  
the record of proceedings of the lower Court has not been availed to date. I note  
20   that the applicants have taken a step in requesting for a typed record of  
proceedings of the lower Court as indicated in the letters dated 30<sup>th</sup> September,  
2019 and 21<sup>st</sup> October, 2019 and to date the same has not been availed.

Regarding the applicants fixed places of abode, I am satisfied that the applicants  
are residents of Alooi Forest Sub-Ward, Lukwarngole Parish, Patongo Sub-County  
25   in Agago District within the jurisdiction of this Court. The applicants will  
therefore not abscond when released on bail.

5 I have also taken into consideration the sureties presented for the applicants and there particulars for example the National IDS and introductory letters from the LC1 Chairpersons. I am persuaded that the said persons can stand surety for the applicants and ensure their presence as and when required by this Court since they have proper identity documents with known places of abode.

10 In the ***Igamu Joanita V Uganda, CACA NO.107 of 2013***, this Court noted that the conditions set out in the ***Arvind Patel (supra)*** are not exhaustive and each case must be determined on its own merits. In addition to the conditions set out in ***Arvind Patel*** for granting bail pending appeal, Court ought to also take into account the provisions of Section 15(1), 15(2), 15(3) of the TIA.

15 ***Section 15(3) of the TIA*** lists exceptional circumstances as;

a) Grave illness certified by a medical officer of the prison or other institution or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody.

b) The certificate of no objection signed by the Director of Public Prosecutions.

20 c) The infancy or advanced age of the accused.

The exceptional circumstance advanced by the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants is that of advanced age. Counsel for the applicants submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> applicants are of advanced ages. The 2<sup>nd</sup> applicant, Kidega Albino being 56 years old while the 3<sup>rd</sup> applicant, Okumu Micheal is 54 years old. This Court has in

25 ***John Kashaka Muhanguzi V Uganda, Court of Appeal Criminal Reference***

5 **No.797 of 2014** held that a person of or above 50 years was considered as one of advanced age.

Having regard to all the circumstances of this application, I am satisfied that the Applicants are first offenders, there is a possibility of substantial delay in determining their Appeal, they have fixed places of abode in Alooi Forest Sub-  
10 Ward, Lukwarngole Parish, Patongo Sub-County in Agago District within the jurisdiction of this Court, they have substantial sureties and the 2<sup>nd</sup> and 3<sup>rd</sup> applicants are of advanced age. These factors lend credence to this application.

In conclusion, I would grant this application and release the Applicants on bail pending the determination of their appeal on the following conditions;

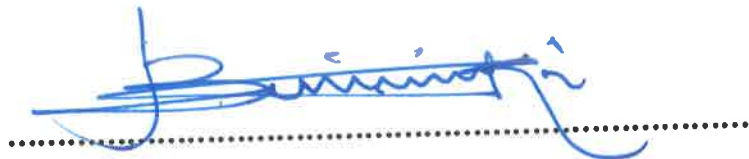
- 15 a) Payment of cash bail of UG shs 1,000,000 (Uganda Shillings One Million only) by each of the Applicants into this Court.
- b) The Applicants should report to the Registrar of this Court every month at 9.00 am, beginning on 22<sup>nd</sup> January 2020, for extension of their bail until their appeal is heard and disposed of or until further orders of this Court.
- 20 c) Mr. Oryem Micheal, Mr. Labedo Silas, Okot George Stephenson, Akena Wilfred Owot, Ocen Alfonse and Anek Susan Nowell Ongom should be the applicants' sureties, to secure their attendance in Court whenever they required to do so.
- d) The said sureties should each bind themselves by signing a bond (not cash)  
25 of shs. 5,000,000/= (Five million shillings only)

5 e) A breach of any of the above conditions shall render the bail pending  
appeal herein granted to the Applicants liable to an automatic  
cancellation.

**I so order.**

Dated this.....22.....day of.....Jan.....2020

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**HON. MR. JUSTICE CHEBORION BARISHAKI**

**JUSTICE OF APPEAL**

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