

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**MISC. CR. APPLICATION NO.95**

**(Arising From The Chief Magistrate's Court mukono)**

**ROBERT MUWANGA ::::::::::;::::::::: APPLICANT VERSUS**

**UGANDA ::::::::::;::::::::: POND BNT**

**BFORE: The Honourable Mrs. Justice M. Kireju**

**RULING**

This is an application brought by way of Notice of Motion, seeking an order of this court that the applicant/appellant Robert muwanga be released on bail pending the hearing and final determination of the pending appeal. It is brought under s.217 of Magistrates Courts Act as amended by Act 4 of 1985. It is supported by an affidavit sworn by Robert muwanga on 2/9/1992.

The applicant in this application was represented Mr. Odimbe of M/S Odimbe & Co. Advocates and the State was represented by Mr. Ogwanga, Senior State Attorney. The applicant was on 14/9/92 convicted by the Acting chief Magistrate mukono, having pleaded guilty to an offence under S.87 (b) of the penal code Act. He was sentenced to 10 months imprisonment and has since filed appeal against conviction and sentence. The grounds of this application are that that there **is** an appeal pending before this court. Secondly that the appeal is likely to succeed because the Inspector: of Uganda Transport Company Ltd. (UTC) is not a public officer with in the meaning of s.4 of the Penal Code Act. That the charge was not proper, it was misconceived and bad in law. That the facts as disclosed did not disclose any offence.

Counsel for the applicant referred court to the case of Finley Roselie v R. 1958 EA 292. In support of his contention that the court is required to consider whether the appeal was frivolous or vexatious. Counsel submitted that the appeal in this case was not frivolous or vexatious the last ground of this application was that there might be delay in disposing off the appeal in which event the appeal might be rendered nugatory in case the sentence is served before the appeal is heard. Counsel submitted that the applicant had substantial

sureties, Mr. Edward Lubega RC I secretary of Central Zone Natete where the applicant comes from; he is married with 5 children. The second surety is Sam Seruwo, 30 years, married with 5 children, and chairman RC I of Central Zone Natete.

Mr. Ogwang for the state submitted that his instructions were to oppose the application. He said that according to records the applicant had pleaded guilty to the charge. The plea was unequivocal and that according to S. 216(3) of M.C.A, he had no right of appeal having pleaded guilty. That the applicant has to prove to court that his plea was erroneous in-law otherwise this appeal can only be limited to sentence. Counsel submitted that the conviction was entered legally and the applicant having been convicted on his own plea has no right of appeal. Counsel further submitted that bail pending appeal has to be granted in exceptional circumstances. The applicant has not proved to court that his appeal has overwhelming chances of success.

He referred court to the case Raghibir Singh lamba v R.1958 337 in support of his submission that bail pending appeal has to be granted in exceptional circumstances. Counsel argued that an inspector UTC is a public officer within the meaning of s.4 of the Penal Code Act. The company was a public company as it rendered services to the public and its officers were public officers. The management and Board of the company was appointed by the Minister of Transport, Works and Communication and therefore officers of UTC were people employed in public service he referred to paragraphs a and b of S.4 of P.C. Counsel concluded by saying that an inspector of UTC was a public officer within the meaning of s.87 (b) of P.C and therefore the chances of the appeal succeeding Were very slim. He submitted that the applicant failed to prove exceptional circumstances and the application should be dismissed. Mr. Odimbe in reply submitted that, S.216 (3) of M.C.A. only applied where the court is satisfied that what the accused pleaded to was an offence. That the court then considers whether the plea was equivocal or unequivocal.

Counsel referred to the case of Bukenya vs. Uganda 1967 EA 34 in support of his contention. Counsel submitted that the fact did not disclose the offence and therefore there was no offence to plead to.

Counsel further submitted that the fact that the minister appoints the Management of UTC does not render all employees public officers. Referring to the case of Lamba, counsel submitted that at this stage. The applicant does not have to prove beyond reasonable doubt that his appeal would succeed that he has reasonable to show a chance of success.

After perusing the court record, the notice of motion with the supporting affidavit and listening to submission by both counsel, my task is to decide the merit or demerit of this application. This court has power to release an appellant before his appeal is heard in accordance with S.217 (i) of Magistrate's Courts Act. Before bail pending appeal can be granted the appellant must have filed an appeal and must show exceptional or unusual reasons as was held in the Tanganyika case (as it then was) already cited above. The exceptional circumstances included the likelihood of success of the appeal. Raving at the court record, I think they are some issue which the appellate court might have to consider under the appeal. The argument on this ground by both counsel cannot be addressed by court in this application but are matters which will be dealt with at the hearing of the appeal the grounds of appeal are neither frivolous nor vexatious.

The second ground was that the hearing, the appellants delay and in which case the appeal might be rendered nugatory in case the sentence is served before the appeal. No much was said by either counsel on this ground of delay but what is on record is that an appeal has been filed and no hearing date has been fixed. This uncertainty can be ruled in the applicant's favour since the term he is serving is a short and may be completed before the appeal is completed thus making the appeal- nugatory.

Considering the two grounds together I have found that the applicant has proved exceptional circumstances entitling him to be granted bail.

The applicant is accordingly granted bail on the following terms:-

- (1) The applicant to deposit with this court costs of 20,000/=
- (2) The two sureties presented in court to execute a bond of 20,000/= each not cash.

(3) The applicant to report to registrar (Criminal)High Court every Friday starting from 30/10/92 for the extension of his bail until final disposal of the appeal or until other order from this court to the contrary.

M. KIREJU

JUDGE

23/10/1992

23/10/1992

Hr. Odimbe - for the applicant

Applicant present in court

State Attorney – (said the ruling can be delivered in his absence)

Mr. Oburu - Court Clerk.