

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS APPLICATION NO 069 OF 2003

KATENDE EDWARD..... APPLICANT

**VERSUS**

UGANDA ..... RESPONDENT

**BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI**

**16<sup>th</sup> December 2003**

**RULING:**

The applicant sought bail on grounds of advanced age namely that he is now 55 years old and this being exceptional circumstances under the TIA would qualify him for grant of bail. He also stated that he has a fixed place of abode. According to his affidavit filed in court on 14/11/03, he annexed a birth certificate evidencing his advanced age now. It is this birth certificate that raised the eyebrows of the prosecution. In an affidavit in reply filed in court by Elizabeth Musoke on 2/12/2003 the freshly issued birth certificate was put in doubt. A copy of an application for appointment duly filled by the applicant on 3/7/1996 (PSC Form No.3 of 1972) was annexed. It indicated the applicants date of birth as 5/1/1960. It also outlined his education record spanning from 1969 to 1985 when he graduated from Makerere University with a Bachelor of Science degree. It also attached the O and A level certificates and a transcript for the degree which stipulated his date of birth as 5/1/1960. From these rather clear documents the deponent concluded that the applicant is now 43 and not 55 years of age. She also concluded that the applicant had, contrary to his averment that he was of advanced age, failed to prove the age.

In rebuttal, the applicant filed a supplementary affidavit by his octogenarian mother who stood by his side in court with remarkable fitness. She put her son's date of birth as 1984. In his own affidavit in rejoinder the applicant deponed that he had a tortured childhood during which he began school at over 11 years of age. That he became the object of mockery by his fellow students who teased and menaced him till he was forced to stall his education, resuming later. He also deponed that he was made to doctor his age and date of birth by his teachers who advised him to underdeclare his age in order to enlarge on his working life after late schooling. He then produced more documents in the form of another Birth Certificate and baptism certificate. These were also put in question by the prosecution.

In his submissions Mr. Bogezi learned counsel for the applicant and Mr. George Spencer prayed court to put the applicant on bail. Mr. Bogezi contended that the applicant had proved his date of birth and was of advanced age. He also submitted that the inconsistencies in his age had been clarified by reference to his teachers leading to the doctoring of his real age. He also submitted that the applicant had a fixed place of abode and produced two certificates of title to show that the applicant owned registered land. He further contended that his age had been proved by his own mother and the applicant would not abscond or interference with witnesses. He produced two sureties.

Mr. Isaac Ogwang, learned State Attorney, vigorously opposed the application. He cited several inconsistencies in the applicants case and asked court not to accept the birth certificates produced or the affidavit of the applicants mother in the face of the clear evidence of date of birth in the application for employment and academic transcript. He cited the case of **Nkwine Vs Uganda M/A 59/62** to say that contradictions as in this case which go to the root of an application must lead to its failure. He submitted that these contradictions leave the transcript and job application form to be believed since these were freely made out at earlier times when the applicants age was not contested as in this application. He asked court to find that the applicant had failed to prove exceptional circumstances as required by the law and had instead been proved to be 43 years of age. He also submitted that the applicant was likely to interfere with the witnesses and or abscond since one of the sureties, being a younger sibling, would be under his influence as apposed to being able to ensure his attendance of the trial.

Having heard both Counsel and seen all the documents and pleadings, I am of the view that the applicant is a victim of his own antics. There was no need for him to secure a fresh birth certificate to prove his age which he could have done on oath and through his mothers positive averment. He could even continue the big lie in his life and say he is actually 43 years of age and seek bail. But he went about it in a most shoddy and suspicion raising manner making it difficult for any court to believe him.

The state on the other hand produced a document that verified his age and which, in my view, is evidence that the applicant may have committed possible offences in securing his qualifications and job. I would thus not be inclined to agree that the applicant ought to be accorded a label that he is of advanced age only for the purpose of qualifying him for bail. He had taken advice to enlarge his working years by under declaring his true age according to him. This was accepted by the Public Service and Makerere University who both acted on this account.

Now the applicant would want court to enhance his age and bring him into the bracket of advanced age for purposes of affording him bail. I do not think this is the way. I am unable to accept that he is 55 years as it is, just for purpose of bail. I am also not satisfied that the applicant will not interfere with documentary evidence, the witnesses or investigations in this case.

On the contrary I believe he can do anything in his power to protect his job gotten on a lie about his true age. He would most likely not leave the prosecution a free hand but would use his freedom to undermine his prosecution. While I agree that he has some property and has produced credible sureties I am unable to accept his request that he be granted bail.

I accordingly dismiss this application.

R.O.Okumu Wengi

**JUDGE**

16/12/2003

**16/12/2003** Ogwang for State  
Bogezi for applicant  
Senabulya Court Clerk.

Ruling read in open court in presence of above.

R.O.Okumu Wengi.

**JUDGE**

16/12/2003.