

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT GULU
HCT – 02 – CO – MA – 0056 – 2008
and
HCT – 02 – CO – MA – 0058 - 2008
(Arising from Gulu Criminal Case No. 910/2008)

1. JAMES OKECH

2. CHRISTOPHER

LAGAI OYON :::::::::::::::APPLICANTS/ACCUSED

VERSUS

UGANDA::::::::::::::::::RESPONDENT/PROSECUTION

BEFORE: HIS HON. JUSTICE REMMY KASULE

RULING

This ruling is in respect of two bail applications in this court: Numbers 56/2008 and 58/2008; both arising from Gulu Chief Magistrate’s Court Criminal Case Number 910/2008.

In the Criminal Case Number 910/2008, James Okech, applicant in number 56/2008 and Christopher Lagai Oyon, applicant in Number 58/2008, are both charged with two others of causing financial loss c/s 269 (1) of the Penal Code. In the same case Christopher Lagai Oyon is further charged with two other charges of abuse of office c/s 87(1) and conspiracy to commit a felony c/s 390 of the Penal Code. In this ruling James Okech shall be referred to as **“the first applicant”** and Christopher Lagai Oyon as the **“second applicant.”**

The charges with which the two applicants are respectively charged are alleged to have been committed between April and March 2008 at Amuru District Local Government, Amuru District. The first applicant is said to have committed the same by virtue of his office of employment as Chief Finance Officer, while the second applicant is alleged to have committed the charges, by virtue of his office of employment of senior personnel officer attached to Amuru District Local Government.

The essence of the charges is that the applicants, and others on the charge sheet, in the performance of their respective duties of office, while attached to Amuru District Local Government, created ghost teachers by helping to enter their names in the Teachers payroll and failing to delete their names from the payroll, knowing or having reason to believe, that such act would cause financial loss, be prejudicial to the interest of Amuru Local Government.

Each of the applicants deponed to an affidavit in support of his application.

The first applicant, who resides at Lacor Trading Centre, Layibi Division, Gulu Municipality, is a family person with a wife and six children and three dependants. His wife is expected to deliver soon. He presented Mr. Ochola Patrick, a business man and a brother in law to applicant, and Mr. Lalonyo David, an accountant, professional colleague and friend as his sureties.

First applicant was arrested on 20.08.2008, charged in Chief Magistrate's court, Gulu, pleaded guilty, and remanded at Gulu Government Central Prison.

The second applicant resides at Acholi Road, plot 22 Pece Division, Gulu Municipality. He is married with one wife, has one child aged ten and supports four other dependants. Mr. Ochaya Gabriel, a programme Co-ordinator with Dyeru Tek Community Organization, elder brother to second applicant, and Mr. Ongom Apollo, Accountant, Gulu Independent Hospital, younger brother to applicant, were presented to court as sureties to the second applicant.

On 27.08.2008 second applicant was charged before the Chief Magistrate's Court, Gulu, pleaded not guilty and was remanded to Gulu Government Central prison.

The second applicant claims and attached medical notes and communication from Dr. Engenye Charles, Ag. Medical Superintendent, Gulu Regional Hospital, that he is a hypertensive patient.

According to paragraph 1 and 6 of second applicant's affidavit of 28th August, 2008, on 22.08.2008, second applicant was admitted to hospital and was discharged on 26.08.2008. On 28.08.2008, while in prison, his temperature rose and was admitted to Gulu Referral Hospital.

It was submitted for both applicants that they be released on bail as they both had established residence within the jurisdiction of the court and had provided substantial sureties. For the first applicant, it was submitted that the fact that his wife was about to deliver, was a

matter for the court, to exercise its discretion and release the first applicant to provide the necessary presence and consortium to her. For the second applicant, it was submitted that his grave illness, is an exceptional circumstance, justifying his being released on bail.

The state opposed the applications for bail as no exceptional circumstances had been proved, and at any rate the state was ready for trial, investigations having been completed.

Any accused person has a constitutional right to apply to a court of law to be released on bail. This right is given by Article 23 (b) (a) of the Constitution.

It is however not a constitutional right that every accused person must be granted bail. The court has a discretion to grant or to refuse to grant bail: **See Constitutional Court of Uganda Constitutional Reference No. 20 of 2005: Uganda (DPP) vs Col. (Rtd) Dr. Kiiza Besigye. See also Constitutional Court of Uganda Constitutional Petition No. 20 of 2006 Foundation For Human Rights Initiatives vs Attorney General.**

While considering an application for bail, court has to consider the need to balance the constitutional rights of the applicant together with the needs of society to be protected from lawlessness; and the fact that the criminal justice system, an essential component of the Rule of law, is effective. Court therefore, considers a number of factors, such as weighing the gravity of the offence, the risk of the accused absconding, interference with the course of justice, the likelihood of the applicant offending while on bail, indication of violence or threatening behaviour by the accused, the status of the offence and the stage in the proceedings and the extent to which evidence pointing to proof of guilty or innocence of applicant, once that evidence is placed before court by the investigating officer. The court may also consider the possible penalty that the applicant may suffer, in case of conviction.

The court considering bail, must be conscious, all along, that the applicant is presumed innocent until proved guilty or until the applicant pleads guilty.

The legislature in its wisdom, has, because of the gravity to society of some criminal offences, imposed restrictions as to bail in respect of those specific offences. Section 15 of the Trial on Indictments Act, Cap. 23, provides that court may refuse to grant bail to a person accused of a specified offence, if that person does not prove to the satisfaction of the court that an exceptional circumstance exists justifying release on bail.

Section 15(2) (d) and (f) of the same Act specifies the offences of abuse of office and causing financial loss as some of the offences where proof of an “exceptional circumstance” is required before applicant is released on bail.

The exceptional circumstances that have to be proved are according to section 15 (3) of the Act, grave illness certified by a medical officer of the prison where applicant is detained, as being incapable of adequate medical treatment while the accused is in custody, or a certificate of no objection to bail from the DPP or infancy or advanced age of the applicant.

The first applicant has not proved any exceptional circumstance in his application.

As to the second applicant, there has been an attempt to prove grave illness. There is however no certification by a medical officer of Gulu Central Prison, where second applicant is on remand, to the effect of that prison being incapable of making provision for second applicant to receive adequate medical treatment for his sickness. **In Miscellaneous Application Number 30 of 2003 at High Court, Kampala, Immaculate Lugolobi vs Uganda: Bamwine; J. stated:-**

“ In my view in a bail application of this nature, nothing should be left to guess work. At this stage of the proceedings, what this court requires is information, not so much that the applicant is sick, because the applicant can give that information and has done so in her affidavit, but certification by a medical officer of the prison where the accused is detained that the applicant is so gravely ill that her condition warrants release from custody for better management of the said health condition. Such a certificate has not been furnished”

The above holding applies with equal force and effect to the second applicant’s application. This court holds that the second applicant has not proved to the satisfaction of court, grave illness, as an exceptional circumstance.

It therefore remains to court to determine whether, in the exercise of its discretion, any of the applicants, or both of them, may be released on bail.

Judicial discretion is the power of the court to act in accordance with the dictates of its own judgment and conscience in accordance with well laid down principles of law. Its exercise must not be arbitrary, capricious or unrestrained. It must be the exercise of judicial judgment based on facts and guided by law or the equitable decision of what is just and proper under the circumstances. It must be exercised according to the rules of reason and justice and

must be based on judicial grounds: **See Hon. Justice Benjamin J. Odoki: The Uganda Living Law Journal vol. 1 No. 1 June 2003 p.3**

This court has held in High Court at Gulu **Miscellaneous Application No. 166/2008: Bongomin Richard Akal vs Uganda: that:-**

“The burden is upon the applicant to satisfy court by putting forth before court a set of facts, beyond the ordinary consideration, upon which the court can act, in the exercise of its discretion to admit the applicant to bail”.

The above applies to this application.

The first applicant has asserted that his wife is about to deliver and therefore he should be granted bail to provide the necessary support and consortium as the husband.

There is no affidavit from the wife of the applicant as to her state of health, and as to why, apart from the normal consortium that a spouse gives to the other, the first applicant's presence is particularly required at this material time in particular. There is no medical evidence at all to support the assertion of the first applicant.

Indeed court was not in any way given any particulars of the first applicants' wife, such as names, residence, work and work place, age of pregnancy, and whether or not there are any peculiar health problems with her pregnancy. The burden lies upon the applicant. This burden has not been discharged.

As to the second applicant, there are no special facts, other than grave illness, which he did not prove, for court to exercise its discretion upon, so as to grant bail to him.

The offences with which the applicants are charged are very grave offences. That is why the legislature saw it fit to isolate them by section 15 of the Trial on Indictments Act, Cap. 23, from the ordinary offences where bail is granted on proof of the ordinary normal requirements for bail.

Both applicants have failed to prove exceptional circumstances or to put forward a set of facts upon which this court can exercise its discretion and grant bail to each one of them. The applications for bail therefore fail. Both stand dismissed.

Since the state is ready with its witnesses, the trial court is urged to commence the hearing of the case at earliest.

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Remmy Kasule

Judge

12th September, 2008.