THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT GULU

HCT - 02 - CO - MA - 054 - 2008

(Arising from Criminal Case number 767/2008)

OLIT JAMES :::::APPLICANT
VERSUS
GANDA::::::RESPONDENT

BEFORE HON. JUSTICE REMMY KASULE

RULING

The applicant, who at the time of his arrest and being charged, was assistant Town Clerk of Layibi Division Gulu Municipal Council, is charged in Gulu Chief Magistrate's Court, Criminal case number 0767 of 2008 of causing Financial loss c/s 269 and 270, abuse of office c/s 87(1) and Fraudulent False Accounting c/s 325 (a) of the Penal Code Act.

He applies for bail through this application. This court is satisfied that applicant has permanent residence, there are substantial sureties to stand for him and there is no credible evidence that once released on bail, he will interfere with the investigations of the case. There are also no other criminal charges pending against the applicant.

However the applicant is charged with very grave offences in respect of which the law stipulates that in order to be released on bail, the applicant must prove to the satisfaction of court an exceptional circumstance: See section 15(3) of the Trial on Indictments Act: See also Florence Byabazaire vs Uganda High Court Miscellaneous Application Number 284 of 2006.

The applicant has not proved any exceptional circumstance in this application.

This court, of course, has in the exercise of its overall jurisdiction, powers to grant bail, even in absence of an exceptional circumstance being proved. Court does so through the judicial exercise of its discretion.

The test this court has set is that:

"The burden is upon the applicant to satisfy court by putting forth before court a set of facts, beyond the ordinary considerations for bail, upon which

the court can act, in the exercise of its discretion, to admit the applicant to

bail"

See: High Court of Uganda at Gulu Miscellaneous Application Number 0037 of 2008:

Bongomin Richard Akal vs Uganda, unreported.

The applicant has asserted that he had a child of tender years -4 years- whose

mother has separated from the applicant had is believed to be living in Sudan. The child now

stays with the maid alone at home and needs the applicant's presence.

The name of the mother of this child is not stated. It is also not disclosed as to

when the separation happened.

There is no independent evidence to support the applicant's version.

Applicant also states that he has other dependants whose outstanding fees is

outstanding and have been sent back home. There are no names or ages stated of these

dependants.

On the basis of the evidence put forward, court is not satisfied that this is a case

where it should exercise its discretion to grant bail to the applicant.

This application is dismissed.

Remmy Kasule

Judge

2nd September 2008

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