

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT KAMPALA

MISC. CRIMINAL APPL NO. 13 OF 2012

(ARISING FROM CRIMINAL CASE NO. 169 OF 2012)

EDWARD MUWAWU DUMBA.....APPLICANT

VERSUS

UGANDA.....RESPONDENT

BEFORE: HON. MR. JUSTICE LAMECK N. MUKASA

Representation:

Mr. Erick Muhwezi of counsel for the applicant

Mr. Emmanuel Muwonge (SSA) for state

Court clerk

Mr. Kutosi Charles

RULING:

The applicant Muwawu Dumba Edward is charged with obtaining money by false presence contrary to section 305 of the Penal Code Act. The particulars of the offence are that him with others still at large between December 2010 and December 2011 within the Kampala district with intent to defraud, obtained cash U.shs 360,000/- and 560,000 (Euros (Approx Ushs. 1.68 billion) from Leaty Byesenje Ssebowa and Carstin Jespersen by

falsely pretending that he was selling them, sold and transporting it up to Europe whereas not.

He was originally charged before the Chief Magistrate Court Buganda Road on 10th February, 2012. The Applicant was on the application of the of the DPP, on 17th August 2012 committed for trial by the High Court. The case was fixed for hearing in a session commencing 12th November, 2012. The Applicant was absent he having earlier been granted bail by the lower court on 10th February 2012. Criminal summons were issued but Court was informed that efforts to trace him failed. A warrant of Arrest was issued for the arrest of the Applicant and Summons issued for his sureties. That State informed Court that the Warrant of arrest could not be effected as the State had failed to trace him and had also failed to serve the Sureties as they could not be traced. On State's application on International Warrant of Arrest was issued through INTERPOL and the case was adjourned to the next convenient session following the Applicant's arrest.

On the 17th December, 2012 the Applicant was eventually produced by this Court, following his arrest in Masaka, and remanded to Luzira Prison. That Applicant now seeks the reinstatement of his bail. In his affidavit in support of the Application he avers that when granted bail by the Buganda Road Magistrate's Court he responded to all Court summons and never disobeyed any of his bail terms. That when his case was eventually committed to the High Court he was never served with summons. That he never intended to break any of his bail terms.

In Constitutional Petition No. 46 of 2011 and Constitutional Reference No. 54 of 2011. Hon Sam Kutesa & Others vs Attorney General 7 Uganda the right to liberty was emphasized. The court stated:

“ The genesis of the right to bail is the protection of the right to liberty. It is now established that the right to liberty is universal human right and freedom which is inherent and not granted by the state. Article 20(2) of the constitution enjoins all organs and agencies of Government and all persons to respect, uphold and promote the fundamental rights and freedoms, which also includes the right to bail”

Following the committal of the Applicant to the high Court for trial the learned Chief magistrate properly guided herself when she followed the Constitutional Court holding in the above case that bail granted by a Court of Competent jurisdiction to a person arrested in connection of a criminal case does not automatically lapse by reason only of the fact that person being committed to the High court for trial. The learned Chief Magistrate accordingly directed the Applicant to stay on bail pending his trial at the high Court.

I have carefully perused and considered the lower court proceedings. It shows that until the committal, the applicant had continued to answer bail as and when directed by Court. But on committal he was given an open grant of bail whereby he was to “stay on bail pending his trial at the High Court”. This should be checked in future. It is my considered view, and I hereby direct that on committal, where the Accused has been answering bail before the Committing Court, the Committing court should direct the Committed

Accused person to continue answering to bail before the Deputy Registrar, Criminal Division of the circuit of the jurisdiction under which falls the Committing Court. This will ensure that the committed Accused person who is on bail continues to be monitored by court until his trial.

However, when exercising its discretion to grant or not to grant bail, court must be satisfied that in the circumstances of the particular case the accused person will turn up to answer the charge at the trial and whenever he is required by Court. In the course of hearing it was brought to the notice of this Court that the Applicant despite being an indigenous Uganda is also holding passport No. MPKL69181 issued by the Kingdom of Netherlands and expiring on 5th September, 2016.

There was no Ugandan Passport handed in, however, it is not a legal requirement for every indigenous Uganda citizen to hold a Ugandan passport and dual citizenship was legalized in Uganda. I must however be cautious of the fact that the Applicant is a holder of a Netherlands passport.

The Applicant is also charged of obtaining big sums of money, approx. Ushs. 2.04 billion, fraudulently. In the circumstances I find the temptation to abscond when released on bail high.

The Applicant has presented two new sureties, namely, Bwanika Tarch Kiwuli holder of Passport no. B0452103, voters card no. 11583052, a friend, resident of Wakimese LCI Kyengera, Wakiso District, and Mugumya John, holder of Voters Card No. 11323534, a friend, resident of Kitebi, Mutundwe, Rubaga Division.

I have cautiously considered all the above and do hereby re-instate the Applicants bail on the following terms:

1. The Applicant shall execute a CASH bond in the sum of Ushs. 50,000,000/= (Shillings fifty Million only).

2. The Applicants sureties are hereby approved and hereby approved and each is to execute a bond in the sum of UShs. 50,000.000/=(shillings fifty million) NOT CASH.

3. The Applicant is to deposit the following in Court with the Deputy Registrar Criminal Division:

(i) His Netherlands Passport No. NPK169181.

(ii) His Certificate of Title for land at and known as Buddu, Block 277 Plot 597 Serinya Masaka.

4. The Applicant is not to move out of Uganda without permission of the Deputy Registrar or Criminal Division until ordered otherwise by this Honorable Court.

5. The Applicant is to report to the Deputy Registrar Criminal Division every 24th day of each Calendar month with effect from 24th January 2013.

In default of any of the above conditions the Applicant is to keep on remand.

LAMECK N. MUKASA

JUDGE

24/12/2012