

CRIMINAL MISC. APPLICATION NO. 09 OF 2019
(ARISING FROM CRIMINAL APPEAL NO. 01 OF 2019)
(All arising out of Jin-01-CR-CO-01 OF 2017)

UGANDA:.....: UGANDA

BEFORE: HON. LADY JUSTICE EVA K. LUSWATA

He has attacked the sureties for being of different addresses. That it may be difficult for them to police the applicant to attend his appeal. In the alternative, he concedes that if bail is granted, then it should be on stringent terms.

In reply, counsel Musigire points out that no objection has been raised against that the two male sureties and the ladies presented as sureties, are actually the wives of this applicant with whom he has children. He has prayed that the bail terms should not be stringent otherwise it will defeat the purpose of the application.

This is my ruling.

I agree that bail pending an appeal is a strictly discretionary right of the applicant, but he is allowed to make the application.

The legal basis for this kind of application is the cardinal principle of the presumption of innocence of any person. It prevails, even after the first conviction right up to the point of the final appeal. However, I must point out that the applicant in this case is already a convict, and he cannot be treated in the same stead as one applying for bail in the first instant. He already has a conviction of 22 months over his head.

That said, of most importance or my greatest interest as the appellate court should be that, this applicant will return to prosecute his appeal. Otherwise allowing him temporally release may render the conviction nugatory.

The case of **Jamwa Vrs. Uganda** (Supra) and the case of **Arvind Patel Vrs. Uganda SCCA No. 1/2013** have laid out conditions to be fulfilled on bail pending appeal. These have already been related by counsel Musigire, and I will not repeat them.

In my estimation, the applicant fulfills most of those conditions. It is not contested that he is a first offender. However, it would be too early for the court to gauge the success of the appeal by simply looking at the grounds raised in the memorandum of appeal.

What is important, as pointed by counsel Musigire is that, the conviction was of an offence where no personal violence was indicated. This is a relatively new appeal and the likelihood of hearing it in the near future are not very high, because the Court operates on a 'first came first serve' basis. However, it is still incumbent upon the applicant and his lawyer to expedite prosecution of this appeal.

Indeed, there has been no objection that the two ladies are the wives of the applicant and judging by his name, he must be a Muslim and it is not unusual that two wives have been presented today. However I do have some reservations. None of the two appeared to be resident with him

in the same village, and one appears in fact, to be of a different district. Also, the other two sureties appear not to be in the same village.

That notwithstanding, there is no rule against that. It still remains in the discretion of the court to gauge the kind of relationship and social psychological power that the sureties will have upon the applicant to compel him to attend court. I believe the four sureties combined should be able to do so. They have given us their full address and contacts, they must remember that in the event that the applicant absconds, then the 'guns' of the court would be turned against them. So they should take their duties very seriously.

The odds appear to be in favour of this applicant and I will allow his temporary release on bail pending appeal on the following conditions;

1. He will deposit a cash bail of Shs. 500,000/= (five hundred thousand shillings only) in Court before his release.
2. The sureties shall execute non cash bonds of Shs.1,200,000/= (one million two hundred thousand shillings only) each.
3. The applicant will report to the Registrar of the Court every 15th day of the month with effect from 15th May 2019.

Should any of the bail terms be abused, the bail shall be canceled and the applicant returned to serve his sentence.

I so order.

Signed

EVA K. LUSWATA
JUDGE
13/5/2019