## THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT JINJA

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)

WALUSIMBI MANSUR:::::: APPLICANT

**VERSUS** 

## **RULING**

## BEFORE: HON. LADY JUSTICE EVA K. LUSWATA

I have listened to the submissions of both counsel. This is an application for bail pending appeal which our law allows, save as rightly pointed out by counsel for the applicant, it still remains the discretion of the court to grant or decline bail.

Beyond stating his residence in the affidavit as being Water Supply Ward, Busoigo Zone North Division, Kamuli Municipality, in Kamuli District, the applicant has presented four sureties in support of this application.

It has been related by his counsel, that he fulfills the conditions of bail which have been set out in the case of **Chandi Jamwa Vrs. Uganda Criminal Appeal No. 20/2011 Court of Appeal**.

Counsel has further related that it is enough that two or three conditions are fulfilled and that each case should be considered on its own merit and circumstances.

Counsel for the state has objected to the application. He stated that this is only a discretional right of the applicant who is now a convict. He feels that since the appeal is already on file, it is the duty of applicant's counsel who is on a private brief, to follow up and expedite its prosecution.

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