

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

1. HCT-04-CR-CM-0071-2013

**NAMUREMWE PATRICK.....APPLICANT
VERSUS
UGANDA.....RESPONDENT**

2. HCT-04-CR-CM-0072-2013

**CHEBET ALFRED.....APPLICANT
VERSUS
UGANDA.....RESPONDENT**

3. HCT-04-CR-CM-0073-2013

**YORAMU KASUMU.....APPLICANT
VERSUS
UGANDA.....RESPONDENT**

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

RULING

This is an application brought under the provisions of section 205 of the Magistrates Courts Act and section 40 (2) of the Civil Procedure Act.

Application seeks orders that the applicants be granted bail pending hearing and determination of CRO/12/13; which is an appeal.

The various applicants filed affidavits in support of their application. The application is grounded on the following averments.

1. That their appeal has great chances of success.

2. That there is likelihood that hearing of the appeal will delay.
3. That it is in the interest of the applicants that they be granted bail.

Counsel for applicants referred court to the case of **ARVIND PATEL V. UGANDA CRA (1)2003**, where the **Justice Oder**, Justice SC, as he then was pointed out that the considerations for bail pending appeal are;

- (i) Character of applicant
- (ii) Whether he/she is a first offender or not.
- (iii) Whether offence with which applicant was convicted involved personal violence.
- (iv) That appeal isn't frivolous and has reasonable possibility of success.
- (v) Possibility of substantial delay in determining the appeal.
- (vi) Whether applicant has complied with bail terms before or during the appeal.

All applicants in their affidavits deponed to the likelihood in having their appeal tried.

Resident State Attorney opposed the application raising issues with the available evidence on affidavits being insufficient to prove all necessary ingredients for bail pending appeal citing cases of **Igamu Joanita v. Uganda**; where the Judge held that evidence must be specifically led by affidavit to show that accused will not abscond. Also in **ARVIND PATEL V. UGANDA SC CRIM. APP. NO.1/2003**, where considerations for bail pending appeal are laid down, the character of applicants needs to be shown as not likely to abscond –which was not done by applicants. Resident State Attorney had issues with the letters and identifications presented by the sureties, and prayed that the application be rejected.

He further pointed out that appellants have not shown by evidence that the appeal has great chance of success or that substantial delay is likely to occur; before the appeal is heard.

I have carefully perused the application and listened to arguments by both counsel. Guided by the authorities and the law quoted, I find as herebelow.

Conditions which courts have followed in granting bail pending appeal were well articulated in the case of *ARVIND PATEL V. UGANDA SC APP. NO.1/2003*.

I will examine them one by one. He determines if this application meets their demands.

(a) Likelihood of substantial delay in hearing the appeal.

I have perused the record and I have not seen either in the pleadings or by any action of appellants an indication that the necessary steps to fix the appeal were taken. It is speculative to imagine that an appeal will be delayed simply because a court has so many other cases before it. This requirement was not proved.

(b) The appeal was not frivolous. Resident State Attorney concedes that the appeal is not frivolous. This court finds so.

(c) The offence did not involve personal violence. This was a charge of forcible entry and malicious damage to property c/s 335 (1) of the Penal Code Act and 77 of the Penal Code Act. There was no personal violence.

(d) Appellant had been on bail and never absconded. There is no evidence of bail on record.

(e) That accused are of advanced age is not pleaded.

(f) That applicants have fixed places of abode.

Accused have all produced evidence of their residences as per documents on record.

(g) That applicants have substantial sureties. Sureties were provided.

With the above in mind, **Ag. J Ouma** in ***KIGANDA & ORS V. UGANDA 1984 HCB***, held and guided that the following principles govern the determination of an application for bail pending appeal by a convict:

1. The character and antecedents of applicant.
2. The possibility of a substantial delay in hearing an appeal.
3. Whether offence involved personal violence.
4. Whether appeal has possibility of success.

The above four grounds are crucial and in my view should form the crux of the appellants' evidence. The court must have evidence before it to prove sufficiently the appellants who are now convicts are willing to prosecute their appeal and have taken all necessary steps so to do, but there has been delay which is substantial. They must also show by evidence that they are of good character and are not likely to abscond. Evidence must specifically further show that the appeal has a great possibility of success. As rightly argued by the learned Resident State Attorney, applicants in this case have not tried at all to lead evidence to prove any or all of the above orthodox requirements.

All I see on record is a memorandum of appeal, record of proceedings and a general statement by affidavit that the appeal has a great chance of success. I have perused these documents and am not inclined to believe the assertion that this

appeal is likely to substantially delay, or that it is likely to succeed, when not even a single step to have it fixed has even been done.

I am not convinced with the reasons put forward for the requirements by accused to be released on bail pending appeal. The application does not therefore succeed. HOWEVER, I will order the Registrar that let this appeal be fixed for trial immediately not exceeding 30 days from date of this Ruling.

I so order.

Henry I. Kawesa

JUDGE

17.04.2014