

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT ARUA

CRIMINAL APPLICATION No. 0013 OF 2016

(Arising out of Arua Criminal Appeal No. 0004 of 2016)

1. ABIMA CEASAR }
2. ANGUTOKO AUGUSTINO }..... APPLICANTS
3. ADRAPI LUCIANO }

VERSUS

UGANDA RESPONDENTS

Before: Hon Justice Stephen Mubiru.

RULING

This is an application for bail pending appeal. The three applicants were convicted for the offence of Arson c/s 327 of the *Penal Code Act*. The applicants were jointly charged and tried for setting their brother's house on fire and were on 4th March 2016 convicted and each sentenced to seven years' imprisonment by the Chief Magistrate's Court at Arua. They appealed their conviction and sentence on 30th March 2016 but the appeal is yet to be fixed for hearing, hence this joint application by which they seek to be released on bail pending the hearing of their appeal.

Their application is by notice of motion under Article 23 (6) (a) and (c) of the *Constitution of the Republic of Uganda*, sections 14 and 15 of the *Trial on Indictments Act Cap.23* and rules 2 and 4 of the *Judicature (Criminal Procedure) (Application) Rules S.I 13-8*. It is dated 23rd June 2016 and it is supported by three separate affidavits, sworn by each of the applicants respectively on 7th June 2016. The main grounds of their application as stated in the notice of motion and each of the supporting affidavits are that; they have filed an appeal which is pending hearing before this court, they hearing of the appeal is likely to delay since they are yet to be availed a certified copy

of the record of proceedings, they are all of advanced age, they each have a fixed place of abode within the jurisdiction of the court and that they have substantial persons willing to be their sureties, and that they were on bail during their trial and honoured the bail conditions. The state did not file an affidavit in reply.

At the hearing of the application, the applicants were represented by Mr. Samuel Odama while the state was represented by Mr. Pirimba Emmanuel, State Attorney. Counsel for the applicant, orally amended the enabling law cited for this kind of application to section 40 (2) of the *Criminal Procedure Code Act* and section 134 (4) of the *Trial on Indictments Act*. In his submissions, he reiterated the grounds stated in the motion and supporting affidavits and presented two sureties for the first applicant and three sureties each for the second and third applicants. In his response, the State Attorney opposed the application on grounds that the applicants were no longer presumed innocent and in the alternative, prayed for stringent conditions in the event that the court is inclined to grant them bail.

While before conviction the applicants had the presumption of innocence in their favour, after conviction, that presumption is no more as they are now convicts. The essence of bail pending appeal therefore is not to enable them as innocent accused to attend their trial but rather to enable them as convicts to pursue their appeal. This places a greater burden on them while seeking bail pending appeal to prove themselves as persons deserving the grant. The principles which courts consider in these applications were again discussed at length in *Arvind Patel v. Uganda; S.C. Cr. Application No. 001 of 2003*. They include;

1. The character of the applicant.
2. Whether he/she is a first offender.
3. Whether the offence for which he/she was convicted involved personal violence.
4. Whether the appeal is not frivolous and has reasonable possibility of success.
5. The possibility of substantial delay in the determination of the appeal.
6. Whether applicant has complied with bail conditions granted before conviction or during the pendency of the appeal if any.

It is not necessary to prove all those grounds. A combination of a few of them is sufficient. In the application before me, I am satisfied that the applicants were on bail during their trial and that

they honoured their bail conditions. Secondly, that there is likely to be a delay in the disposal of their appeal. Two of the sureties presented to court had served before as sureties and duly discharged their duties. I find the rest of the sureties presented by each of the applicants substantial, apart from Mr. Endroinzi Joseph Reuben presented as the third surety for the second applicant, who is unsuitable by reason of his relatively advanced age. I take into account the fact that the applicants now labour under a sentence of seven years' imprisonment which might be an incentive to abscond. But I am also persuaded by the action they took of appealing both conviction and sentence following their conviction that they still believe, perhaps strongly, in their innocence. The propensity to escape could be mitigated by the imposition of reasonably more stringent terms than those upon which they were released on bail during their trial. I therefore find this a proper case to grant the accused bail on the following terms;

1. Each of the applicants is to execute and pay a cash bond of Shs. 500,000/=
2. Each of their sureties is to execute a non-cash bond of Shs. 5,000,000/=
3. Each of the applicants is to report to the Assistant Registrar of this Court on the first Monday of every month until the disposal of the appeal or further orders of the court.

In the circumstances, this application is allowed. I order the release of the applicants on bail subject to them meeting the above conditions, failure of which they are to be remanded. I so order.

Dated at Arua this 14th day of July, 2016.

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Stephen Mubiru
Judge.