

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
MISCELLANEOUS CRIMINAL APPLICATION No. 0035 OF 2016

ASIBUKU MUZAMIL **APPLICANT**

VERSUS

UGANDA **RESPONDENT**

Before: Hon Justice Stephen Mubiru.

RULING

This is an application for bail pending appeal. The applicant, together with six others, was tried by the Chief Magistrates Court of Arua for the offence of Arson and was convicted and sentenced to three years' imprisonment on 7th January 2016. Being dissatisfied with the decision, he sought leave to appeal out of time, which was granted on 8th November 2016. He duly filed a notice of appeal on 14th November 2016, hence this application for bail pending the hearing of that appeal.

His application is by notice of motion under section 40 (2) of the *Criminal Procedure Code Act*. And section 205 of *The Magistrates Courts Act*. It is dated 14th November 2016 and supported by his affidavit sworn on the same day. The main grounds of his application as stated in the Notice of Motion and supporting affidavit are that; he is suffering from cancer which requires specialised medical attention from Mulago Hospital in Kampala which he cannot access while in custody. Hearing of the appeal is likely to delay yet he needs time to prepare his appeal. He was on bail during his trial and he observed the conditions of his bail, has a fixed place within the jurisdiction of the court and has substantial sureties to present to court.

In an affidavit in reply sworn by a one Gertrude Nyapir, a State Attorney, on 28th November 2016, she states that the respondent is opposed to the grant of bail to the applicant mainly on grounds that; the offence for which the applicant was convicted involves personal violence and being a convict, he is likely to abscond. Instead, his appeal should be accorded an expeditious hearing.

At the hearing of the application, the applicant was unrepresented while the state was represented by Mr. Emmanuel Pirimba, State Attorney. The applicant, in his submissions, elaborated further the grounds stated in the motion and supporting affidavit and presented two sureties. In his response, the learned State Attorney elaborated further the grounds stated in the affidavit in reply and prayed that the application be dismissed.

After listening to the submissions of both counsel and recording the particulars of the two sureties presented, I granted the application and ordered for the release of the applicant on bail pending appeal, undertook to explain the reasons by this ruling and indicate further conditions attendant to that decision.

The considerations for bail pending appeal have been specified by numerous decisions of the superior courts of record, including; *Arvind Patel v. Uganda, S. C. Criminal Application No. 1 of 2003*, and they are;

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.

The law is that the applicant need not satisfy all the considerations, a few of them will suffice. In my view, the applicant before me substantially satisfied all those requirements since during his trial he honoured the conditions of his bail, he is a first offender, the manner in which the offence of arson for which he was convicted did not involve any direct personal violence, the main ground of his intended appeal is that he was not afforded an opportunity to defend himself, which is not a frivolous ground, there is a possibility of delay in presenting his appeal if he remains in custody since he is not represented and needs to process the appeal himself, and he visibly suffers from cancer that requires specialised treatment.

In the circumstances I found merit in the application ordered the accused to be released on bail pending appeal on the following conditions; -

1. The applicant was to execute a non-cash bond of Shs. 5,000,000/=.
2. Each of his sureties were to execute a non-cash bond of Shs. 10,000,000/=.
3. The applicant is to report to the Assistant Registrar of this Court on the first Tuesday of every Month until the appeal is heard or further orders of the court and to the Office of Resident Senior State Attorney in Arua on the last working day of every month until the hearing of the appeal or further orders of the court.

It is for those reasons that the application was allowed and an order made for the release of the applicant on bail pending his appeal. The appeal is hereby fixed for hearing on the, day of 2017.

Dated at Arua this 1st day of November, 2016.

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Stephen Mubiru
Judge.