

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KOLOLO

MISC APPLIC-NO0021 of 2016

KAMYA VALENTINO Vs UGANDA

RULING

This is a ruling on a bail application by **MR. KAMYA VALENTINO** who is charged with Embezzlement and Money Laundering. The applications are premised on the following grounds;

- 1. He is presumed innocent.*
- 2. He has a right to apply for bail.*
- 3. He has a fixed place of abode, and are law abiding citizens, ready and willing to abide by the bail conditions set by the Court.*
- 4. He has substantial sureties.*
- 5. He is not likely to abscond.*
- 6. He honoured bail terms when he was released on bail in the lower court.*
- 7. There are exceptional circumstances justifying his release.*

I have carefully considered the issues raised by all parties to the application. I fully recognise the applicant's right to apply for bail and the presumption of his innocence.

The overriding principle in an application of this kind is that in the exercise of its discretion to grant or refuse bail, the court does in principle address only one all-embracing issue, which is whether the interests of justice be prejudiced if the accused is granted bail. And in this context it must be borne in mind that, **if an accused is refused bail in circumstances where he will not through omission or commission be a threat to the cause of justice, the interests of justice are also prejudiced.**

To determine this, the court has to assess a number of factors which include the gravity of the offence(s), the likely penalty in the event of conviction, whether or not the applicant has a

known address and tangible interests within the courts jurisdiction, and the quality of the proposed sureties.

Though the applicant seems to have a fixed place of abode, there can be no doubt, going by the amount of money involved, and the likely penalties in the event of conviction, that the offences are grave.

THE SURETIES

Counsel Ssempebwa submitted that their primary role is to ensure that the accused attends his trial and he is quite right. It should be remembered though that the reason sureties are usually made to sign bonds is that there is always a possibility of the accused absconding, and that the complainant should have something to fall back to in the event of such abscondment.

For this reason especially in economic crime cases involving big monies, sureties should demonstrate the ability not only to ensure that the accused answers bail, but also to pay up the recognisance they will be required to sign. Asset recovery and the “**follow-the-money**” principle are major aspects of the Anti-corruption legislation. Bail terms are supposed to reflect the realities of the case, which include having in mind the possibility of abscondment and therefore ensuring that property of the same value as that of the subject matter is available for restraint.

In this case there is no indication that the sureties will be able to rise up to the occasion in the event that they are called upon.

EXCEPTIONAL CIRCUMSTANCES.

In determining whether or not a bail applicant has established the existence of "exceptional circumstances" within the meaning of section 15 (1) of the T.I.A, the court has to make a decision on the facts judged within the context of the particular case.

It was argued that Mr Kamyia is labouring under multiple ill-health conditions. There was some attempt at proving the ill health through a medical report that was attached to the affidavit in support of the application. According to the report the applicant has ever been admitted in Paragon Hospital Bugolobi for about ten days. The Hospital however, while admitting that the accused has ever been treated at the facility said that he was an out-patient.

Considering that the report that was attached to the affidavit in support was made by a medical officer from Luzira and not Paragon Hospital, I believed the prosecution version which was based on a response from Paragon Hospital. The applicant has never been admitted to Paragon Hospital. The averments in the affidavit in support are false.

I have also looked at the dates of receipt in court of the Notice of Motion and the affidavit in support (**24th May 2015**), and that on which the affidavit was deponed (**30th May 2015**). The dates seem to suggest that the affidavit was deponed after the Notice of Motion was filed in court. The letter forwarding the medical report on which the ground of exceptional circumstances is based (**25th May 2015**), is later to that on which the affidavit was filed (**24th May 2015**). This further shows dishonesty on the applicant's part since it is not possible that he deponed to health conditions which had not yet been confirmed. This fact proves that the conditions complained about do not even exist after all.

I find that the applicant has not proved the existence of exceptional circumstances. For this reason I am not able to exercise my discretion to grant the application. Moreover the affidavit in support of the application is false and on the authority of **BITAITANA VS KANANURA (CA 47/1976)** the application has to fail.

ORDER

The in-charge of Luzira prison is hereby ordered to make sure that the accused person is taken to see a doctor should he be requested.

Margaret Tibulya.

Judge.

10th June 2016.