

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

**CRIMINAL MISC. APPLICATION NO. 025 OF 2018
[ARISING FROM JINJA CRIMINAL CASE NO AA 005/2017**

- 1. LUGOMBA ROBERT**
- 2. MANSA MUSA**
- 3. MANSA BAZIBU.....APPLICANTS**

VERSUS

UGANDA.....RESPONDENT

RULING

BEFORE: HON. LADY JUSTICE EVA K. LUSWATA

The applicants presented this application for their release on bail pending appeal under **Section 132 of the Trial on Indictment Act and Section 40(2) of the Civil Procedure Act**. The application which is supported by the 1stapplicant's affidavit raised grounds which can be summarized as follows:-

- [1] The applicants were tried and convicted of criminal trespass contrary to Sections 302(a) and Section 338 of the Penal Code Act for criminal trespass and removing boundary marks with intent to defraud.
- [2] The applicants have jointly filed an appeal against their conviction which appeal has a high likelihood of success but is likely to delay, due to the heavy schedule at the High Court
- [3] There is a danger that the appeal will be heard after the applicants have served their sentence, which is not in the interests of justice.

- [4] The offence for which the applicants were convicted did not involve personal violence and is not severe
- [5] The applicants have fixed places of abode within the jurisdiction of the Court and are not likely to abscond when released on bail.

In his affidavit, Lugomba Robert added that the sentence for all three applicants is for one year imprisonment in respect of the first count, and two years imprisonment on the second count, to run concurrently. That the applicants, who have no other pending charges, are serving their sentence at the Kakira Government prison and their appeal No. 5/2018 is pending hearing in the High Court. That all three applicants have places of abode at Buwolomera Village, Busedde Sub County in Jinja District which is within the jurisdiction of this Court. He concluded that all three applicants had substantial sureties to stand in for them. The state filed no affidavit to oppose the application.

Mr. Asiimwe, the applicants' counsel adopted the contents of the application and in addition, submitted that the appeal has a high likelihood of success. He argued that it will be unfair for his clients serve sentences of a conviction likely to be set aside. That the applicants were in the lower court granted a non cash bail of Shs. 500,000 which they respected and dutifully attended their trial until judgment.

The applicants presented the following suerities:-

Lugomba Robert:-

- 1) **Saduli Samuel** resident of Bwase A Kibibi Parish, Budondo Sub County, Jinja District paternal uncle peasant farmer aged 50 years. Cell No. 0756920205.
- 2) **Elese William** resident of Bwase A Kibibi Parish, Budondo Sub County, Jinja District, nephew of 1st applicant aged 35 years, a peasant farmer cell No. 0756745529 and a national ID and LC letter of introduction is available.

Mansa Musa

- 1) **Tenywa Ahmada** resident of Muvule Crescent, Mabwa Parish, Jinja Central Jinja District paternal uncle peasant farmer aged 70 years.
- 2) **Ziraba Adam** resident of Aldina Road Jinja Central Jinja District nephew to the 2nd applicant business man in produce aged 42 years

Mansa Bazibu

- 1) **Semujju Ismail** resident of Muvule Crescent, Mabwa Parish, Jinja Central Jinja District nephew of the 3rd applicant. Farmer aged 34 years, photographer.
- 2) **Waiswa Yusuf** resident of Nakanyonyi Ward, Bugembe Town Council Jinja District nephew to the 3rd applicant business man in produce aged 35 years

The state through Mr. Emmanuel Peremba opposed the application. He argued that the applicants being convicts should not be treated as those applying for bail pending trial. That their appeal having been filed way back in 2017, indicates lack of seriousness to have it fixed for hearing. He preferred the Court to fix the appeal. Asimwe responded that this application was filed soon after the appeal and this being a light sentence, it should not raise any fears of a likelihood to jump bail.

My decision

I note that the application was presented under laws that have no bearing to the facts of the case. The Civil Procedure Act cannot be quoted in criminal proceedings. None the less no objection was raised against this anomaly, and the respondent would suffer no prejudice if the Court allowed to entertain this application. Indeed appropriate legislation exists allowing a convict to apply for bail pending appeal. For the purposes of this application, the correct provision would be Section 205 MCA which provides that

“An appellant may, at any time before the determination of his or her appeal, apply for bail to the appellant Court, and the appellant court may grant the bail.”

It is equally provided under Section 40(2) of the Criminal Procedure Code (CPC) that

“The appellate Court may, if it sees fit, admit an appellant to bail pending the determination of his or her appeal.....”

The rationale given for allowing this type of bail is that our Constitution has set in stone the presumption of innocence under Article 28 (3)(a). Thus a convict would not lose that right until his or her conviction is upheld by the highest Court possible to hear their appeal. See for example, **Lwamafa Jimmy Vs. Uganda Crim. Application No. 011/2017 (Court of Appeal)**. According to the Court in **Arvind Patel Vs Uganda Supreme Court Criminal Application. No. 1/2003**, the powers of Court when granting that category of bail are discretionary and should be exercised judiciously. That said, and this is my considered view, owing to a standing conviction, a convict who has filed an appeal does not lie exactly in the same stead as an accused person who is on remand pending the determination of his trial. I will take all those factors into consideration as I exercise my discretion.

The Court in **Arvind Patel (supra)** set forth conditions that a Court can consider to grant bail pending appeal as follows:-

- a) The character of the applicant,
- b) Whether or not they are a first offender,
- c) Whether the offence for which they were convicted involved personal violence,
- d) Whether the appeal is not frivolous and has a reasonable possibility of success,
- e) The possibility of substantial delay in the determination of the appeal.

The character and antecedents of the applicants were not given in detail. However it was not contested that they are all first offenders and convicted of fairly simple offences and serving light sentences. It was also not contested that the offences for which they were convicted did not involve personal violence. None the less, although the applicants are still entitled to apply for bail pending hearing of their appeal, as counsel for the state cautioned, they cannot be treated in the same stead as those attempting to obtain release on bail before a conviction.

I am unable at this point in the proceedings to gauge the success of the appeal. That would entail descending into its merits which is not possible. However, a quick perusal of the memorandum of appeal indicates that it raises five grounds on matters of fact (strength of the prosecution evidence) and law. My Court is at this point enjoined to give that pleading due regard.

More important however is the argument by the applicants' counsel that this being a relatively light sentence, there is a danger that the applicants may serve their sentences even before the appeal is heard and disposed of. That argument is not fool hardy because the judgment of the Learned Magistrate was delivered on 11/1/18. There is no evidence that the appeal has a hearing date yet and going by the amount of work in this Court, this cannot be blamed entirely on the applicants or their advocate.

The above notwithstanding, it is of great importance that the Court has conviction that the applicants who are already convicts, will not take the chance to abscond. I must thus carefully scrutinize the sureties presented and the proximity of the applicants to my Court.

In the application, the applicants mentioned their places of abode which it is stated, are within the jurisdiction of this Court. I note that there was no contest to that fact. I also give due regard to the sureties presented to ensure the applicants' attendance at the appeal. Since their details and contacts were given and recorded, I shall not repeat them here. Suffice to say, none of the sureties are resident in the same village as the applicants. None the less, they are close relatives and although some are quoted as nephews, they are mature enough to understand the nature of their duties and repercussions if the applicants make the unfortunate decision to abscond. Again, the danger of absconding may have been exaggerated since the applicants are faced with relatively light sentences part of which have already been served. Indeed, it was not contested that the applicants who answered the charges at the trial while on bail, respected the bail terms. I am persuaded that it is more likely than not, that they will adhere to the bail terms on the appeal as well.

I therefore allow the application. All three applicants are granted bail on the following conditions:-

- a) Cash bail of Shs.300,000 (three hundred thousand only) **each.**
- b) Each of the six sureties are bonded in the sum of Shs. 1,000,000 (not cash)

- c) The applicants shall report to the Registrar of the Court to answer the bail terms, on every 30th day of each month starting on the 30th day of May, 2019. Should that day fall on a weekend, then they shall report on the first working day immediately following that weekend.
- d) In default of the above terms, the applicant are to remain in custody to serve their sentences pending a decision on the appeal

I so order.

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EVA K. LUSWATA

JUDGE

29/4/2019