

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

**CRIMINAL MISC. APPL. No. 244 of 2019
(Arising out of Criminal Case No 042 of 2019)**

KAMBALE MALI YA BWANA ::::::::::::::

APPLICANT

Versus

UGANDA

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RESPONDENT

**BEFORE: HON. MR. JUSTICE MICHAEL ELUBU
RULING**

This application is commenced under Articles 2 (1), 126 (a) & (e) and 28 of **the Constitution of The Republic of Uganda**; Sections 78 (b) and 80 of the **Magistrates Courts Act**.

The applicant, **Kambale Mali Ya Bwana**, seeks an order that the chief magistrate's court of Nakawa be ordered to refund three million shillings (UgX 3,000,000/-) paid as cash bail bond during his trial.

The grounds on which the applicant has based his prayers are set out in the Notice of Motion and elaborated in an affidavit in support deposed by him.

It is stated that on the 17th of September 2016 the applicant was charged, tried and convicted by the Nakawa Chief Magistrates Court. On the 18th of November 2016, he was released on a cash bail of UgX 3,000,000/-. He appealed against the conviction and sentence of the lower court which was reversed on the 17th of

September 2019. His bail was never cancelled, but when he applied for a refund of the cash deposit, it was denied.

The respondent opposes this application. It is stated that while it is true that the applicant was granted a cash bail of UgX 3,000,000/-, he defaulted on appearing or reporting to Court. As a result his sureties were ordered to forfeit their bond. That when the applicant was re-arrested and detained, his bail was cancelled. On the 15th of March 2019 he was produced from prison for judgment and sentence. By then the bail had been cancelled.

This Court directed the parties to file written submissions which are on the record and will not be reproduced here.

The relevant provision in this matter is Section 83 (1) of **the Magistrates Courts Act** which stipulates,

Whenever it is proved to the satisfaction of a magistrate's court by which a recognisance under this Act has been taken, or when the recognisance is for appearance before a court, to the satisfaction of that court, that such recognisance has been forfeited, the court shall record the grounds of the proof, and may call upon any person bound by the recognisance to pay the penalty thereof, or to show cause why it should not be paid.

In this case the affidavit in reply is to the effect that the recognisance was forfeit as the applicant's bail was properly cancelled by the trial court. The record shows that indeed the applicant had to be produced from prison for the judgment and sentencing in spite having been earlier granted bail. There is also no evidence to rebut the assertions in the respondent's affidavit in reply implying they were uncontested. Whenever affidavit evidence remains unrebutted a court is entitled to find that the other side has accepted as true.

In view of the cancelation of the applicants bail, and his failure to meet his bail conditions, then it follows that his bail was forfeit to the state.

In the result therefore this application is without merit and stands dismissed.

Dated at Kampala thisday of July 2022

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Michael Elubu

Judge