

8. *I am informed by my advocate Counsel Kafuuzi Jackson which information I believe to be true, that my appeal is likely to take time before it is disposed of by this Honourable Court because of its heavy schedule. If bail pending appeal is not granted, I will suffer irreparable damages since my sentence is short.*
9. *I am a first time offender.*
10. *The offence I am being charged with, does not involve any form of violence.*
11. *I am a Ugandan ordinarily living in Uganda and I have a fixed place of abode in Naluvule, Wakiso district which is within the jurisdiction of this Honourable Court.*
12. *I have sound and substantial sureties who are willing to undertake that I shall comply with the terms and conditions of the bail pending appeal once granted.*
13. *I am a person of good conduct and have no other pending criminal charges against me.*
14. *I have serious health complications and my health has been deteriorating ever since I was sent to prison because my condition cannot be handled by prison medics. It is also a risk to other inmates.*
15. *I am a caretaker of my elderly father and my mother who was diagnosed with hypertension and diabetes.*
16. *I undertake to abide by the terms and conditions this Honourable Court shall set for the said bail once granted.*
17. *My National passport is with Anti-Corruption Court Kololo and the bail money amounting to 5, 000,000/= that I paid for the earlier bail is also still with the Anti-Corruption Court and I have not yet claimed it. I pray that this Court orders the same be transferred to this Court.*
18. *I swear this affidavit in support of my application for release on bail pending hearing and determination of my appeal by this Honourable Court.*
19. *Whatever I have stated herein is true and correct to the best of my knowledge and belief unless otherwise stated in which case the same is true and correct to the best of information and advice I have been given.*

At the hearing, the applicant was represented by Mr. Kafuuzi who submitted that the DPP was served. They did acknowledge receipt of the notice and the affidavit of service. He stated that he did not know why they were not in court. He explained that service was received by the Assistant DPP Betty Khisa who signed the same. He prayed to court to have the matter proceed ex parte since there is proof of service.

Mr. Kafuzi submitted that this is an application for bail based on three grounds namely:-

The first ground is that the applicant has filed an appeal in this Court **Criminal Appeal No.876 of 2014** by way of Notice of Motion filed on 19/11/2014.

The applicant does not know when this appeal will be heard yet he was convicted and sentenced two years imprisonment in May 2013.

Considering the busy schedule of this court, since the appeal has not been fixed it is in the interest of justice that this application be granted.

The applicant has been on bail for three years while the matter was being heard by the Magistrates Court until 2014 when he was convicted.

During all those three years the applicant never missed court, never absconded not tried to derail the legal process.

Counsel cited the case of **Arvind Patel v. Uganda SCCr. App. No.1 of 2003** which stated inter alia;

That the applicant's character is a point in the consideration of the application that if he is a first offender and complied with all conditions for bail prior by never absconding this is a factor for the grant of the application.

The second ground is that the applicant is sick. He suffers from chronic gastritis which keeps flaring due to poor diet and stressful conditions of prison. In support of this application is a medical report signed by a medical officer Dr. Alex Officer in Charge Medical Services Murchison Bay Luzira Prison where the applicant is being held.

Despite the fact that the applicant is only 35 years old, this medical condition is such that he cannot live or survive under prison conditions

The third ground is that of presumption of innocence under Article 28(3)(a) of the Constitution emphasizes in **John Kashaka Muhanguzi v. Uganda Court of Appeal Criminal reference No.797 of 2014**

Where this Court held that until the applicant has been confirmed by the highest Court his or her presumption of innocence is not completely extinguished.

The applicant is also a first time offender who committed an offence which does not involve violence and is bailable. There is also possibility in substantial delay in hearing his appeal.

Considering the previous decision reached by the lower court, the appeal is not frivolous and has great chances of success. In the premise, this applicant has three sureties willing to stand by him.

The first surety is Mr. Wasswa Peter Ssemanda Aged 50. He is a businessman who lives in Masajja Parish-Makindye Divison. He has a passport, residence ID and LC letter. He is elder brother to the applicant.

The second surety is Ms.Nakazibwe Bena T a resident of Mutunga Parish Kitintale Nakawa. She is a business woman working with Power Solutions selling generators and other electrical equipment. She has a passport, Driving permit and LC Letter. She is aged 45 years and elder sister of the applicant

The last surety is Mr. Ssenyonjjo Asuman a resident of Naluvule LCI Wakiso District. He is a business man aged 37 years old and a friend of the applicant. He has residence ID and a passport.

The applicant has a fixed place of abode within the jurisdiction of this Court. That is residential house in Naluvule Wakiso where he resides with his wife here in court and a child who is one.

The first surety was his surety in the lower court. The applicant is the sole bread winner. He has been in custody since he was convicted. He deposited 5 million shillings which amount is still held by the Honourable Court. The applicant's passport is also held in the lower court.

Counsel prayed that bail be granted to the applicant on condition that the money be retained until the appeal is determined in his favour.

Court's Findings

The guidelines for the Court to grant bail pending appeal were laid down in the case of **Arvind Patel v. Uganda, Supreme Court Criminal Application No. 1 of 2003** and these include:-

- (i) The character of the applicant
- (ii) Whether he or she is a first offender or not
- (iii) Whether the offence of which the applicant was convicted involved personal violence
- (iv) The appeal is not frivolous and has reasonable possibility of success
- (v) The possibility of substantial delay in the determination of the appeal
- (vi) Whether the applicant has complied with the bail conditions granted after the applicant's conviction and during the pendency of the appeal (if any)Bail

I have perused the application and the submissions thereof and this application shows that:-

The applicant is of good character, is a first offender, the applicant is sick-suffers from chronic gastrotitis, the offence the applicant was convicted of in the lower court does not involve personal violence, the applicant complied with bail

conditions in the lower court, there is the possibility of delay in disposal of the appeal, he has presented to court substantial sureties, and in addition to the principle of presumption of innocence.

This application is hereby granted on the following conditions:-

1. The applicant is to bind himself to forfeit the sum of Shs. 5,000,000/= (Five Million Shillings) deposited in court in request of his bail application before the lower court.
2. The applicant's passport held in the lower court to remain in custody of court.
3. The three sureties shall bind themselves in the sum of Shs. 5,000,000/= (Five Million Shillings) not cash.
4. The applicant shall report to the Registrar on the 1st Monday of every Month.

Dated at Kampala this...27th.....day of...January.....2015

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Hon Justice Rubby Aweri Opio, JA