

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**CORAM: HON. JUSTICE A. TWINOMUJUNI  
[SINGLE JUSTICE]**

**CRIMINAL APPLICATION NO.101 OF 2009**

**KAVUMA FREDDIES SCHOOF .....APPLICANT**

**V E R S U S**

**UGANDA .....RESPONDENT**

**[Application arising from Criminal Appeal No.13 of 2009]**

**R U L I N G:**

This is an application by Notice on Motion brought under section 132(4) T.I.A. and section 40 of the Criminal Procedure Act (CPA). It seeks for the release of the applicant on bail pending determination of Criminal Appeal No.13/2009 which is now pending in this court.

This applicant was, on 13<sup>th</sup> March 2009, convicted on one count of obtaining money by False Pretence, three counts of forgery and three counts of uttering false documents and was sentenced

to 5 years, 3 years and 3 years respectively. The sentences were to run concurrently. Shortly after, he filed Criminal Appeal No.13 of 2009 which is now pending in this court. He is now applying for bail pending the determination of the appeal. The application is supported by an affidavit of the applicant dated 11<sup>th</sup> August 2009 in which he gives reasons why he thinks he is a suitable person to be released on bail pending appeal.

At the hearing of the application, he was represented by Mr. Mac Kabega while the State was represented by Ms Namatovu Josephine who is a Senior State Attorney in the office of the respondent.

Mr. Mac Kabega repeated the contents of the affidavit and cited a number of authorities on which he relied to make this application. Prominent among them were:-

- (1) Arvind Patel vs Uganda S.C. Cr. App. No.1 of 2003.**
- (2) Frank Iga vs Uganda C.A. Misc. Appl. No.99 of 2009.**

He pointed out that the conditions for release on bail outlined in the above authorities were available in this case as shown in the applicant's affidavit which was not rebutted since no reply was filed. He offered three sureties whose particulars I recorded in the proceedings and informed court that the applicant's passport was still being held in the High Court of Uganda in relation to his trial in the Anti-Corruption Court. His prayer was that the applicant was a suitable case to be released on bail pending appeal and should be released accordingly.

Ms Josephine Namatovu strongly opposed the application mainly on the grounds that:-

- (1) The applicant was no longer an innocent man as he was now a convict.
- (2) The applicant has been convicted of very serious crime and the temptation to escape if released is very high.
- (3) The chances of the appeal succeeding are non-existent.

She prayed in the alternative that if the court be inclined to grant bail, then stiff terms should be imposed to make it difficult for the applicant to abscond. She suggested depositing of his passport, frequent reporting to the Registrar of this Court and demanding that the appellant deposits some of the moneys he was ordered to pay as part of his sentence.

I have studied the two authorities that Mr. Kabega relied upon. The considerations on which bail pending appeal is granted were laid down by the Supreme Court in Arvind Patel vs Uganda(supra) as follows:-

- (i) The character of the applicant.
- (ii) Whether or not he/she is a first offender.
- (iii) Whether the offence of which he was convicted involves personal violence.
- (iv) That the appeal is not frivolous and has reasonable chance of success.
- (v) The possibility of substantial delay in the determination of the appeal, and
- (vi) Whether appeal has complied with bail conditions granted before the applicants conviction and during the pendency of the appeal.

I now assess the merit of this application guided by these considerations.

- (i) Character of Applicant.

Learned counsel for the applicant stated from the bar that the applicant was first offender. He pointed out that even on the day the applicant was sentenced, the respondent did not contest that fact. The State Attorney who appeared before me did not wish to contest the fact. Since there is an appeal against this first conviction, it can be assumed that if the appeals ended in his favour, he would be declared a person of good character. I think and hold this consideration is in the applicant's favour.

- (ii) Whether the applicant is a first offender or not.

I have pronounced myself on his matter in (i) above.

- (iii) Whether the offence of which the applicant was convicted involves personal violence.

This consideration is in favour of the applicant

- (iv) The appeal is not frivolous and has reasonable possibility of success.

The issue whether the key prosecution witness was an accomplice in the case or not could make a difference to the result of the case if it was decided in his favour. I am unable to say at this stage that the appeal court will reject that ground of appeal and throw it out. This consideration is decided in favour of the applicant.

- (v) The possibility of substantial delay in determination of the appeal.

In **Frank Iga vs Uganda** (supra) I stated that there are thousands of cases pending in this court all of which require urgent attention. Yet we are completely understaffed and an increment of judges to deal with these cases in the near future is not yet in sight. I will decide this consideration in favour of the applicant.

- (vi) Whether the applicant has complied with bail conditions granted before the applicants conviction and during the pendency of the appeal.

The applicant deponed by affidavit that he was released on police bound after his arrest but before he was charged in court. He honoured the terms of the bond. Upon his being charged in court, he continued to honour all the bail terms till he was convicted and the bail was cancelled. This has not been disputed by the respondent. In those circumstances, this consideration is in favour of the applicant.

In **Arvind Patel vs Uganda** (supra) it was stated that these considerations do not all have to be present in every application. A combination of two or more could be sufficient. Despite strong

objection from the State, I am satisfied that the law allows convicts to be released on bail pending appeal if they satisfy at least two of these considerations. Of course each case must be decided on its own merits. There may be cases where despite the fact that the considerations are satisfied, yet bail pending appeal could be refused. In this case all the considerations named in **Arvind Patel case** are present in favour of the applicant. I therefore order that the applicant be released on bail pending appeal on the following conditions:-

- (1) He will deposit in this court Ug.shs. 20,000,000/= [Twenty million only].
- (2) The two sureties whose particulars appear in the proceedings above to sign a non-cash bond of shs.20,000,000/= each.
- (3) The applicant's passport to remain in custody of the High Court till the determination of the appeal.
- (4) The applicant to report to the Chief Registrar of this Court every second Friday of each month.
- (5) The Registrar should fix the appeal for disposal as soon as possible.

Dated at Kampala this 11<sup>th</sup> day of September 2009.

*Hon. Justice Amos Twinomujuni*

**JUSTICE OF APPEAL.**