

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
AT KAMPALA
CRIMINAL APPLICATION NO. 20 OF 2011
(Arising from Criminal Appeal N0.77 of 2011)

Coram Justice A. S Nshimye, JA

DAVID CHANDI JAMWA:.....APPLICANT

VS

UGANDA :.....RESPONDENT

RULING

This is an application for an order that:

- (a) The applicant David Jamwa be granted bail pending the hearing and determination of his Criminal Appeal N0. 77 of 2011 pending before this Court.

It is brought under Section 132(4) of the Trial on Indictment Act (Cap 23) and Section 40 of the Criminal Procedure Act Cap 116. It is supported by the affidavit of the applicant dated 30.5.20011 and another one deponed to by Mr. Ernest Kalibala an advocate, dated 22nd June 2011.

In a nutshell, it is based on the following grounds:-

- (b) *Grounds exist to grant the applicant bail pending appeal.*
- (c) *That the applicant's appeal has high chances of success.*
- (d) *That judging from the busy schedule of the Court, the appeal may not be heard without substantial delay.*

- (e) *That the applicant was previously granted bail by the lower Court and complied with all the bail terms.*
- (f) *That the offence with which the applicant was convicted did not involve personal violence.*
- (g) *That the applicant will not abscond and that he has sound and substantial sureties ready to stand for him and will abide by the conditions set by Court.*

In an affidavit in reply by Mr. Sydney Atubo of the Inspectorate of Government dated 22.6.2011, he deponed that, the respondent too has appealed against the acquittal of the applicant on the first count of abuse of office for which he was acquitted and their appeal stands a better chance of success than that of the applicant.

That since both parties have filed in the necessary material for the appeal and cross appeal, there would be no likelihood of delay. That the application ought to be dismissed.

The background of the application is that the applicant was tried in the Anti-Corruption Court sitting at Kampala and was convicted of the offence of causing Financial Loss contrary to section 20 of the Anti Corruption Act 2009 and was sentenced to a term of 12 years imprisonment.

Section 132(4) of the Trial on Indictment Act provides:

“Expect in cases where the appellant has been sentenced to death, a judge of the High court or of Court of Appeal may, in his or her, or its discretion, in any case in which an appeal to the Court of appeal is lodged under this section, granted bail, pending the hearing and determination of the appeal”

Section 40(2) of the Criminal Procedure Code reads;

“The appellate Court may, if it sees fit, admit an appellant to bail pending the determination of his or her appeal, but when a Magistrate’s Court refuses to release a person on bail, that person may apply for bail to the appellant court.”

Mr. David F. K Mpanga appeared with Mr. William Kasozi for the applicant. He submitted that while 9 pages of the trial judge's judgment dealt with analysis of evidence in respect of count one for which his client was acquitted, the learned judge analysed in just half a page, the 2nd count, of causing financial loss and convicted the applicant.

Counsel felt that the test applied was below the recognised legal test and irregular which raises the belief of his client that his appeal has high chances of success.

Counsel concluded that in light that the applicant has a viable appeal and that it might take a long time to be heard, it would be just to be released on bail on terms similar to the ones he was on in the High Court.

Counsel referred me to the Supreme Court authority of **Arvin Patel Vs Uganda Cr. application NO. 1/2003** which set out the guidelines under which a person may be released on bail pending appeal. He also cited the case of **Teddy Ssezi Cheeye Vs Uganda Cr. Appl. 31/2009** in which the applicant who had been sentenced to 7 years imprisonment was released on bail pending appeal.

He presented 5 sureties whose particulars are on the file. They were not objected to by counsel for the respondent. Counsel also communicated to Court, willingness of the wife Catherine Bulinda Jamwa to deposit her land title in respect of land situated at Munyonyo comprised in Block 255 plot 1334 valued at shs. 400,000,000/=

In reply, Mr. Mawano Senoga opposed the application. He conceded that most conditions set out in the Arvind Patel case favour the applicant, but Court should look at other factors which are important in guiding Court to grant or not to grant bail. He disagreed with counsel for the applicant based on his hopes for success of the appeal, on the ground that the judge gave his reasons in a small paragraph.

In his view, the paragraph may have been short but with valid reasons because they were based on who made the decision to sell the bonds prematurely. To him, the appeal stands no chance of success. He suggested that since all necessary documents have been filed, the appeal should be fixed for hearing. He prayed that the application be dismissed. Alternatively, if it is granted,

terms should be stringent because chances of absconding are much higher than before and initial terms may not be sufficient.

The case of **Arvind Patel Vs Uganda S.C.C. Application N0. of 2003** set out the conditions to be considered to grant bail to the applicant as follows:

- (a) The character of the applicant.***
- (b) Whether he or she is a first offender or not.***
- (b) Whether the crime of which the applicant was convicted involved personal violence.***
- (c) Whether the appeal is not frivolous and has a reasonable possibility of success.***
- (d) The substantial delay in the determination of the appeal.***

- (e) Whether the applicant has complied with bail conditions granted after the applicant's conviction and during the pendency of appeal (if any).***

His Lordship Justice order observed:

“In my view, it is not necessary that all the conditions should be present in every case. A combination of two or more criteria may be sufficient. Each case must be considered on its own facts and circumstances”.

The above principles have thereafter been applied in hundreds of applications handled by this Court to mention but a few. **Frank Iga Vs Uganda Misc. Application N0. 099/2009, Kifamunte Henry Vs Uganda Application N0. 10/197, Teddy Sezzi Cheeye Vs Uganda Misc Appl. N0. 37/2009, Nalukenge Mildred Vs Uganda Misc. Cr. Appl. N0. 56/2008, Angelo Muwanga Vs Uganda Misc. Cr. Appl. N0. 41/2008.**

Going by the above guidelines in A. Patel's case, I am satisfied that the applicant has proved that he is a first offender and has been of good character in that he abided by all the bail conditions during his trial in the High court.

Secondly, the offence with which he was convicted did not involve personal violence.

Thirdly, since the sureties presented to Court appear to be very substantial and reliable, I have no doubt that the applicant, if released will not be tempted to abscond, but remain around and pursue his appeal to the end.

Lastly, although the parties seem to have put in their relevant appeal materials, one cannot say for sure when the appeal will be heard.

For the reasons given above, I grant the applicant bail on the following terms:

- (a) Cash bail of shs 10 million deposited in the trial Court will be treated as a deposit in this Court and will not be released to the applicant until his appeal has been heard and disposed of.
- (b) He will execute a further bond of shs 500 million not cash with 6 sureties also in the same amount (not cash).
- (c) He will deposit his passport N0. B0704124 with the Registrar of the Court.
- (d) His wife Catherine Bulinda Jamwa will be the sixth surety and in addition to executing the bail bond, will deposit with the Registrar the original title of her land at Munyonyo comprised in Kyadondo Block 255 plot 1334 valued at 400million registered in her maiden names.
- (e) The first five persons presented as sureties are approved.
- (f) The applicant, shall report to the Registrar of the Court on every last working day of the month starting from 29th July 2011 for extension of his bail until his appeal is heard and disposed of or until further orders of this Court.

Dated at Kampala this 24th day of ...June.....2011.

**A.S. NSHIMYE
JUSTICE OF APPEAL**

