

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

MISC. APPLICATION NO 41 OF 2003

Arising from Buganda road criminal case no 894 of 2003

SOLOMON MUHIRWA APPLICANT/ACCUSED

VERSUS

UGANDA RESPONDENT/PROSECUTION

20th August 2003

BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI

RULING:

This is an application for bail under Section 14 of TID and other enabling Laws. The applicant was charged with one count under S. 83 (1) of the Penal Code Act of falsifying or pushing false pay roll records at the Ministry of Public Service where he is a Personnel Officer. The false records related to the Police force itself. To this extent he is charged with a serious and daring act concerning the enforcement agency itself. He was duly charged and appeared in court on 26th June to have appeared again on 5/8/2003. He bled his bail application on 31/7/2003 and did appear before me today the 20/8/2003. According to Mr. Kabega learned counsel for the applicant the application is supported by the applicants affidavit to which a number of medical notes suggesting a history of Asthma were attached. Counsel also produced a letter addressed to the prison medical authorities requesting for a medical assessment of the applicant for purposes of his bail application. However no examination was carried out and not report has been forwarded to this court from the Murchison Bay Prison Hospital. Mr. Kabega asked court to exercise its inherent power and put the applicant on bail pending his trial. He submitted that court was empowered to do so notwithstanding that exceptional circumstances warranting bail had been made out. He presented three substantial sureties namely Mr. Justus Byagagaire grandfather, Ms Bwankosya Racheal and aunt, and Mr, Matama Evans an Uncle to the applicant.

He further depicted the accused as a person of fixed place of abode who would attend his trial to be ensured by the three sureties. He also requested this court to grant bail to the applicant on what he called humble terms.

In response Mr. Ndamurani Ateenyi learned senior state Attorney submitted that other than presenting a history of severe Asthma there court had no medical report to show that the accuse needs to be relieved on medical grounds from his incarceration by release on bail. He contended that while the sureties were substantial and the accused presented a history of Asthma there did not meet the requirements of the law which prescribed that an individual had to show exceptional circumstances to secure court bail in the situation of the applicant. Counsel also asked court if inclined to grant bail to do so on conditions including the deposit of the applicant's passport in court.

I have perused the applicants pleadings the documents presented and also documents presented and also weighed the submissions of both counsel. The law as I understand it is that bail is as constitutional right in so far as article 23(b)(a) stipulates that an accused entitled to apply to the court to be released on bail. Further, the same article stipulates that such conditions, as the court considers reasonable. This article is the two-stroke action signifying a fundamental right and the inherent power and discretion of the court. It has not been displaced by any law and is at the cornerstone of fair trial and presumption of innocence that are non-derogable. On this basis it is correct to say that this court would have to consider an application for bail whether or not a report required to be prepared by medical personnel at a place of incarceration has been presented indicating exceptional circumstances of an applicant predisposing him to being readily being considered for release on bail.

Having said that I am satisfied that the applicant herein should be released on bail pending his trial. He will according be so released on the following conditions that is to say:-

- (a) he will deposit cash of Shs 500,000 (five hundred thousand shillings) only.
- (b) His passport will remain with the police for their custody and or use as an exhibit in the accused's trial until the further orders of the trial court.
- (c) The applicant will not depart the jurisdiction without the permission of this court.

- (d) Each of the 3 substantial sureties will execute a non cash bond in the sum of Shs 2,000,000/= (shillings two million) liable to forfeiture
- (e) The applicant will duly report to the trial court on each day designated by that court as any default will lead to the automatic lapse of this bail.

If the above terms are duly complied with the applicant will be released on trial and will attend his trial unless default recurs in which case he will revert on remand until completion of his trial.

R.O. Okumu Wengi

JUDGE

20/8/2003.

12.45 p.m

20/8/2003

Court as before

Representative same.

Ruling read in open court in presence of applicant.

R.O. Okumu Wengi

JUDGE

20/8/2003.