

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPLA

MISCELLANEOUS APPLICATION NO. 4 OF 2017

5 (Arising from Criminal Appeal No. 11 of 2017)

KYEYUNE MITALA JULIUS :::::::::::::::::::::::::::::: APPLICANT

VERSUS

UGANDA :::::::::::::::::::::::::::::::::::::: RESPONDENT

10 **RULING BEFORE HON. JUSTICE OPIO-AWERI, JSC**

This is a ruling on an application for bail pending appeal. The application was brought by notice of motion under rules 6(2) (a), 42 and 43 of the Judicature (Supreme Court Rules) Directions SI13-11.

15 The grounds supporting this application were contained in the affidavit attached to the notice of motion deponed by the applicant briefly as follows:-

1. That the applicant was on the 15th day of January 2015 charged and subsequently convicted with the offense of theft and conspiracy to defraud in the High Court of Uganda Anti-Corruption Division.
- 20 2. That the applicant was sentenced to seven (7) years imprisonment on charges of theft and three (3) years on conspiracy to defraud and was ordered to refund U.shs. 300,000,000/= (Three Hundred Million Uganda Shillings only).
- 25 3. That the applicant appealed against the sentence and conviction to the Court of Appeal which dismissed his appeal with further orders that the compensation ordered in the High Court be made with interest at 40% per annum from the time it was withdrawn from his account in Centenary Bank Uganda Limited on the 6th day of December 2013.
- 30 4. That the applicant being dissatisfied with the decision of the Court of Appeal upholding his conviction and sentence filed a notice of appeal on the 27th Day of June 2016.
- 35 5. That the applicant has appeal to the Supreme Court on matters of law including subjecting to a further sentence of interest or awarding interest without being heard and without a cross appeal by the Directorate of Public Prosecutions.
6. That the appellant has appealed to this Honourable Court against the sentence and conviction with a high probability of success since it is based on points of law.
- 40 7. That during the course of the trial of **Criminal Case No.030 of 2016** before the Court of Appeal and in the course of hearing of the criminal before trial court, the applicant sought for and was granted bail whose terms and conditions he always diligently complied with.

8. The applicant still enjoys a ray of presumption of innocence, given that this Honourable Court has in the past set aside convictions and quashed sentences in cases of this nature as the Applicant's.
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9. That the crime for which the applicant was charged and convicted does not involve personal violence.
10. The applicant's intended appeal is not frivolous and it has a reasonable chance of success.
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11. The schedule of the Supreme Court is too busy which portends that the hearing of the applicant's appeal may not lie in the foreseeable future.
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12. The applicant is a first time and the offence with which he was convicted did not involve personal violence.
13. That the applicant has got substantial sureties to stand for him on bail and ensure his return to Court.
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14. That the applicant has a fixed place of abode within the jurisdiction of this Honourable Court.
15. That the applicant is a family man and the sole bread winner of his extended family.
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16. That the applicant will abide by all the conditions imposed on him by this Honourable Court.
17. That if the applicant is not released on bail his appeal will be rendered nugatory since he will have served a substantial part of the sentence before the appeal is heard as there is a likelihood of delay in hearing and disposing of his appeal.
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18. That the tenets and ends of justice shall be met when this application is granted.
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- The application was opposed by way of affidavit deposed by Jane Francis Abodo, a Senior Principal State Attorney in the Director of Public Prosecutions, where she deposed as follows:-
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1. That I am a female adult Ugandan of sound mind and employed as a Senior Principal State Attorney in the Office of the Director of Public Prosecutions.
 2. That I am the head of the Anti-Corruption Department and as such I supervised the prosecutors who handled the applicant's case in the High Court and his appeal in the Court of Appeal. I am therefore well versed with the facts of this case and I swear this affidavit in that capacity.
 3. That I am aware that the applicant previously applied before this Court to be released on bail pending appeal vide **Criminal Application No. 09 of 2016**.
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4. That the said application was heard on the 28th day of October, 2016 before the Honourable Justice Eldad Mwangusya who declined to grant the applicant bail pending appeal and dismissed the application.
5. That I have carefully perused the applicant's affidavit in support in **Criminal Application No. 09 of 2016** and his affidavit in support in the present application and the grounds he relies upon in both affidavits are basically the same.
6. That the respondent shall raise a preliminary objection to the effect that the applicant ought to have filed a reference before three Justices of this Honourable Court in accordance with section 8 (2) of the Judicature Act Cap 13 and Rule 52 of the Judicature (Supreme Court Rules) Directions SI 13-11 instead of filing the present fresh bail application.
7. That the averments in paragraph 5 of the applicant's affidavit in support are false as the order 40% interest on the amount to be paid as compensation to the complainant Bank was made by the trial Judge and not the Court of Appeal as alleged.
8. That in reply to paragraph 3 and 6 of the applicant's affidavit in support, the fact that the applicant was released on bail and complied religiously with the bail terms in the two lower courts has no bearing on the present applicant.
9. That in reply to paragraph 9 of the applicant's affidavit in support, this Honourable Court has the sufficient quorum to hear and dispose of the applicant's appeal and the allegation that he risks serving the whole or a substantial part of his sentence before the hearing of his appeal is based on speculation.
10. That in reply to paragraph 10 of the applicant's affidavit in support, the applicant is a convicted felon and can thus not be said to be a law abiding citizen.
11. That in reply to paragraph 11 of the applicant's affidavit in support, the number of children and dependants one has is not a ground for consideration in an application for bail pending appeal.
12. That none of the applicant's proposed sureties are substantial as no evidence has been adduced to illustrate their substantiality.
13. That in reply to paragraph 15 of the applicant's affidavit in support, the applicant has not indicated any points of law that he alleges warrant a high probability of success to his appeal.
14. That in reply to paragraph 16 of the applicant's affidavit in support, while it is true that the applicant was convicted of offences that do not involve personal violence a colossal sum of money (UGX 300,000,000/=) which has not been recovered to date.
15. That in reply to paragraph 19 and 20 of the applicant's affidavit in support, the likelihood of the applicant absconding of justice that this application is dismissed.
16. That whatever I have stated herein above is true and correct to the best of my knowledge.

When this matter came up for hearing, the applicant was represented by Moses Muhumuza assisted by Rapheal Masaba. The respondent on the other hand was represented by Tom Walugembe, a Senior State Attorney.

- 5 I had ordered both counsel to file written submissions but it was only counsel for the applicant who complied. I reluctantly allowed counsel for the state to reply orally. In his oral submissions, the learned Senior State Attorney raised an objection which I feel should first be considered.
- 10 He submitted briefly that this application was bad in law for offending section 8 (2) of the JCA and Rule 52 of the Rules of this Court in that a person who is dissatisfied with the decision of a single justice of this Court is entitled to file a reference to and that reference is heard by a panel of three Justices.
- 15 The learned Senior State Attorney contended that on 28th October, 2016 the applicant filed an application for bail in this Court which was heard by Hon. Justice Eldad Mwangusya who declined to grant that application. The applicant then filed a fresh bail application in which he relies in the same grounds as the ones he relied in a **Criminal Application No. 9 of 2016**.
- 20 The learned Senior State Attorney accordingly concluded that this application was bad of Court process and should be dismissed forthwith.

In reply counsel for the applicant contended that this application was not seeking to vary the decision or depart from the decision of the single Judge but it was a fresh application based on different circumstances a part from those in the last application.

I have overused the provisions of Rule 52 of the Supreme Court Rules. I do not think it covers the situation in the instant case. In the instant case, much as it is true that the applicant had applied for bail before a single Justice and it was denied, the applicant in this application is not seeking to challenge or vary the decision of the single Justice but it is a fresh application to fill in the reasons which led the single Justice to dismiss the application was not aggrieved or dissatisfied by the decision of a single Justice to warrant reference under Rule 52 of the Supreme Court Rules. For the above reasons the preliminary objection is overwhelmed.

On the merit of the application. I have perused submissions of the both counsel. This court as a Court of last resort has jurisdiction to release an applicant at any time before the determination of the appeal as long as it deems it fit, depending on the circumstances of each case.

The main criteria for granting bail pending appeal is that the appeal is that the court must be satisfied that the appellant shall in compliance with bail conditions be available to attend the appeal: see **Igamu Joanita v Uganda, Criminal Appeal No. 107/2013**.

It must also be noted than an applicant in application for bail pending appeal enjoys the presumption of innocence as provided under Article 28 (3) (a) of the Constitution.

The presumption of innocence continues as long as someone decides to exercise his or her right of appeal. The presumption of innocence does not stop at the trial level. The presumption of innocence as enshrined in the Constitution is one of the rail guards to the protection of personal liberty and the right to a fair trial. The presumption of innocence is

also predicated on the motion that courts can make errors because they are manned by human beings.

5 In the instant application, I am in agreement with counsel for the applicant has made out a case for the grant of bail pending appeal. It has been established that the applicant is a person of good conduct. He was admitted on bail in the lower courts and did not abscond.

10 The appeal which is still pending does not appear to be frivolous or vexatious as seen from the memorandum of appeal, while satisfied with the sureties produced by the applicant. I find them substantial sureties in all aspects. They are the same sureties who stood for the applicant in the High Court and the Court of Appeal when bail was granted.

15 For the above reasons, the applicant is granted bail pending appeal on the similar conditions, as granted by the lower courts. Since this was not refunded, the above conditions are accordingly extended by this Court.

Dated at Kampala this.....16th.....day of.....August.....2017.

20 **Hon. Justice Opio-Aweri,
Justice of the Supreme Court.**

Ruling read in Chambers as in open Court this16th.....day of...August.....2017.

25 **Hon. Justice Opio-Aweri,
Justice of the Supreme Court.**