

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA HOLDENT AT
KAMPALA

MISC.CRIMINAL APPLICATION NO.200 OF 2014

5

ASIIMWE RONALD.....APPLICANT

VERSUS

UGANDA.....RESPONDENT

10

BEFORE: HON.JUSTICE RUBBY AWERI OPIO, JA

RULING OF THE COURT

15

This application was brought by way of Notice of Motion under Articles 23(6)(a), 28(3)(a) of the Constitution of Republic of Uganda, 1995, Section 40 and 47 of Criminal Procedure Code Act (Cap.116), Rules 6(2), (43(1), (2) and 44 CAR S.I 13-10 and other enabling laws for orders that:-

20

1. The applicant be released on bail pending hearing and determination of **Criminal Appeal No.0173 of 2014** before this Honourable Court.

2. It is just and equitable that this application be allowed.

The grounds supporting the application are set out in the affidavit sworn by the applicant and they are briefly that:-

25

1. The applicant was on the 6/11/2012 remanded at Uganda Prisons, Murhison Bay on charges of theft c/s 254(1) and 261 of the Penal Code Act (cap.120).

2. The applicant was on 29/7/2013 convicted of the said offense of theft c/s 254(1) and 261 of Penal Code Act by Magistrate Grade 1 at LDC Court and sentenced to 36 months imprisonment in addition to refund order to the complainant.
5
3. The applicant appealed to the High Court of Uganda at Kampala, which confirmed the conviction, maintained the sentence and quashed the refund orders on ground that the amount of money involved in the said offense was not ascertained.
10
4. The applicant being dissatisfied and aggrieved with the conviction filed a Notice of Appeal and Memorandum of Appeal to Court of Appeal of Uganda vide Criminal Appeal No.0713/2014.
- 15 5. The applicant's appeal has great chances of succeeding.
6. The applicant's appeal has possibility of delay to be heard and determined because of heavy schedule of this Honourable Court.
7. The applicant is a first offender and the offense which he was convicted of did not involve any form of violence.
20
8. The applicant has a fixed and permanent place of abode in Gganda Kyebando, in Wakiso District and in Butogota, Kayonza in Kanungu District which areas are all within the Jurisdiction of this Honourable court.
- 25 9. The applicant has sound and substantial sureties willing to undertake that once granted bail the applicant shall comply with terms and conditions of bail so granted.
10. There are no other pending charges against the applicant.

11. The applicant will not abscond and will abide by the conditions set by court and will turn up to prosecute his Appeal to its logical conclusion.

5 12. That the discretion of this Honourable Court be exercised in favour of the applicant.

At the hearing of this application, Mr. Asiimwe Ronald the applicant, represented himself whereas.

Ms. Nalwanga Sherifah Senior State Attorney appeared for the State.

10

APPLICANT'S SUBMISSIONS

The applicant submitted that this application is arising from **Criminal Appeal No.0713 of 2014** and is a result of **Criminal Case No. 1096 from LDC Court** whereby he was tried and convicted of theft contrary to **Section 254 and 261 of the Penal Code Act** and as a result he was convicted after nine months on remand. The applicant appealed to the High Court which confirmed the conviction, maintained the sentence but quashed the refund orders on ground that the amount of money involved in the said offense was not ascertained. That this appeal is arising from High Court judgment which is not dated contrary to **section 86 of Trial on Indictment Act**.

The applicant submitted that his appeal has chances of succeeding. The appeal is against conviction of stealing unspecified sum of money, therefore, once the appeal is heard and determined, it will have chances of succeeding. That during his appeal at High Court, the application was at once withdrawn by masqueraders and as a result crucial evidence from the original file went missing. The applicant has never been asked for accountability of the said money which was willingly given to him

30

through his bank account by the complainant who is his benefactor.

5 The applicant had spent nine months on remand which was computed as part of the sentence and for which it would have been completed, he would be finishing his sentence on the 16/11/2014. That because of the applicant's good conduct before and during time in prison, he brought a recommendation letter asking the authorities concerned that at least my period of remand should be computed as part of sentence.

10 The applicant also submitted that he has a fixed place of abode in Ganda Kyebando Wakiso District and Kanungu with permanent residence and recommendation letter from Chairman LC1 attached on the affidavit with copies of utility bills from UMEME showing that he has a fixed place of abode. That the applicant is a
15 sole bread winner and has 3 biological children among other dependants who include his mother who is a widow with different ailments and attached to the affidavit are immunization certificates as proof thereof. The applicant submitted further that his wife was suffering from kidney complications and needs
20 medical attention. The she cannot work to cater for the children who are of school going age. The medical forms are attached to the affidavit. The appeal is also likely to delay.

25 The applicant stated that during the course of investigation, the police granted him bond which he was able to abide and did not abscond.

The applicant brought to court three sureties and prayed to court to find them substantial namely; Mutegeki Robert a business man, Kato Caleb an Accountant, Ssekindi Jeniffer Carol, a claims Manager with Pax Insurance Company Ltd.

30 The applicant prayed to this court to grant him bail pending hearing of his appeal.

RESPONDENT'S SUBMISSIONS

Ms. Nalwanga opposed the application as per the reasons stated in her affidavit.

5 She contended that this appeal has no likelihood of succeeding in this Court.

That the applicant has failed to successfully prove to this Honourable court that this appeal will succeed in this court. That there is a judgment of Hon. Justice Alvidza which clearly shows that the first appellate court did a very good job in reevaluating the evidence from the lower court thus there is no likelihood of this appeal succeeding.

10 Secondly, the applicant has failed to prove to this court that he has substantial sureties. He swore an affidavit where he mentioned that he has substantial sureties but there is no annexure or nothing to that effect to reflect that has substantial sureties.

Ms. Nalwanga concluded that in the event this Honourable court decides to use its discretion to grant the applicant bail, stringent terms against the applicant should be imposed.

20 COURT'S FINDINGS

The considerations which should generally apply to an application for bail pending appeal were stated in the case of **Arvind Patel v. Uganda Supreme Court Criminal Application No.1 of 2003.**

25 These include:-

- (i) The character of the applicant;
- (ii) Whether he/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 a reasonable possibility of success;
- 5 (v) The possibility of substantial delay in the determination of the appeal.
- (vi) Whether the applicant has complied with bail conditions granted after the applicant's conviction and during the pendency of the appeal (if any).
- 10 In this case, the applicant has shown that:-
- (i) The appellant is a first offender.
- (ii) His appeal has been admitted in hearing.
- 15 (iii) The appeal is not frivolous and has a reasonable possibility of success.
- (iv) There is possibility of delay in the determination of the appeal given the fixed schedule of the Court.
- 20 (v) The applicant is a sole bread winner and his wife is suffering from kidney complications and needs medical attention.
- (vi) He has a fixed place of abode in Ganda Kyebando Wakiso District and Kanungu with permanent residence and recommendation letter from Chairman LC1 is attached on the affidavit with copies of utility bills from UMEME showing that ^{we have} ~~I have~~ fixed place of abode.
- 25

(vii) The applicant brought to court three substantial sureties and prayed to court to find them substantial namely; Mutegeki Robert a business man, Kato Caleb an Accountant, Ssekindi Jeniffer Carol, a claims Manager with Pax Insurance Company Ltd.

5

I also note that there is likelihood of delay in hearing the appeal because of backlog of cases in the court. Accordingly it is just and fair that he should be admitted on bail pending appeal.

In the premises, the applicant is granted on this following condition:-

10

1. The applicant is to deposit the sum of Shs. 500,000/= (Five Hundred thousand Shillings) cash in court.
2. The applicant is to produce two sureties who shall bond themselves in the sum of Shs. 5,000,000/= (Five Million Shillings) not cash.
3. The applicant shall report to the Registrar of this court every first Monday of the Month until further notice.

15

Dated at Kampala this.....^{9th}.....day of*march*.....2015

Applicant in c/o
 M/s *Alwapa Ben* State Attorney Mr
*Phillip* need and sign
*in chambers as*
 HON. JUSTICE RUBBY AWERI OPIO, JA *per c/o*

20