

Hon. J. W. Tsekwa

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBALE
CRIMINAL APPEAL NO. 7 OF 1992
(FROM SOROTI ORIGINAL DR. CASE NO. 376/92)

FRANCIS RUSANYANTEKO APPELLANT
C/O M/S NATSOMI & WANDERA
ADVOCATES, MBALE

VERSUS

UGANDA RESPONDENT

Bail Pending Appeal

BEFORE: THE HONOURABLE MR. JUSTICE S.G. ENGWAU

RULING:

This is an application for bail pending an appeal brought under section 217 (1) M.C.A. by notice of motion supported by an affidavit.

The applicant was convicted on 25.11.92 on a charge of embezzlement contrary to section 257 (a) of the penal code act and was sentenced to 3 years' imprisonment. His appeal against both conviction and sentence is pending in this court. Bail be granted pending the substantive appeal.

In his submissions, the learned counsel for Applicant conceded that bail pending appeal can be granted only in exceptional circumstances: Masraru v. R (1960) EACA. In the instant case, the first such exceptional circumstance is that there is overwhelming probability that the appeal is likely to succeed. In that regard, the counsel strenuously argues that it is not in the interest of justice for the applicant to languish in prison. The one million shillings allegedly embezzled was no embezzlement at all but a mere loan granted to the applicant by one Capt. Mukula as a private affair and not as part of the 26m/= which Capt. Mukula had to pay to the flying school at Soroti as fees for 4 students sponsored by Capt. Mukula.

The second such exceptional circumstance regarding this application hinges on the ill health of the applicant who is suffering from hypertension which is getting worse since he started serving sentence.

In reply, counsel for respondent strongly objected to granting this bail pending appeal. In the first instance, according to evidence on record, the applicant was convicted of embezzlement of 1m/= as part of a total fee of 26m/= for 4 students sponsored by Capt. Mukula to the Soroti flying school. It was not a private loan at all between Capt. Mukula and the applicant.

secondly, if anything, it is the applicant who has preferred to languish in prison. Notice of Appeal was filed in court on 9.12.92 and Memorandum of Appeal was filed on 30.12.92 and yet counsel for applicant after a period of over one month was not ready to argue the substantive appeal despite the fact that proceedings of the trial /2.

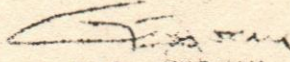
court were already in their hands.

Lastly, on the issue of the applicant getting worse from hypertension, there is no competent medical report to that effect and strongly objected to a chit which the counsel for the applicant wanted to tender in court.

Considering the submissions of both counsel, whether the applicant got a private loan of 1m/= from Capt Mukula or not is an issue for the appellate court when the substantive appeal is being determined. Similarly, whether the 1m/= was embezzled by the applicant or not is a matter for the appellate court after appraising and evaluating evidence on record.

On the question of hypertension, medical report would have assisted this court on this matter. The chit which the counsel for applicant wanted to tender was nothing but a chit from a medical assistant and not a medical officer. This is a dishonest approach on the matter which must stop if court is to be properly assisted.

Finally, certified proceedings of the trial court have been at the disposal of the counsel for applicant and yet twice he is not ready to prosecute the appeal even after a period of over one month. No blame can be accepted that the applicant is languishing in prison at the hands of the respondent. Equity aids the vigilant not the indolent. Accordingly, this application for bail pending appeal is dismissed. Substantive appeal be fixed on an early date convenient to this court for hearing.


S.G. ENGWAU

JUDGE

On the question of hypertension, medical report would have assisted this court on this matter. The chit which the counsel for applicant wanted to tender was nothing but 12.2.93. from a medical assistant and not a medical officer. This is a dishonest approach on the matter which must stop if court is to be properly assisted.

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