

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

CRIMINAL APPLICATION NO 01 OF 2019

SUMBU JEAN LOUIS APPLICANT

VERSUS

UGANDA RESPONDENT

BEFORE: MWONDHA JSC

RULING

This application was brought by way of Notice of Motion under Article 2, 23 (6) (a) of the Constitution of the Republic of Uganda 1995 as amended Section 132 (4) of the Trial on Indictment Act Cap 23; Section 40 (2) of the Criminal Procedure Code Act, Rule 41 (I) & (2) of the Supreme Court Rules (Directions 1996).

The Applicant was seeking for an order of releasing him on bail pending appeal on the grounds that he needs effective and sufficient medical attention pending the determination of the Criminal Appeal No 17 of 2019 filed in this Court.

He also sought an order that costs of the incidental to this application abide the result of the appeal.

The applicant deponed an affidavit in support of the application in which he briefly stated as follows:

- (1) That he is a male adult a Congolese of sound mind resident of Upper Buziga in Makindye Division KCCA.
- (2) That he is 64 years of age and suffering from stroke.

- (3) That at the time of his arrest by Police, he was charged with Embezzlement and taken at SIU in Kireka. He was released on Police bond and he was reporting to Police until 22nd day of September 2014. (He attached a copy of the Police release bond
- (4) That he was charged in the anti-corruption Division for Embezzlement C/S 19 (c) (i) 2(iii) of the Anti-Corruption Act 2009, and Forgery C/S. 342 and 347 of the Penal Code Act Cap. 120
- (5) That during his trial he applied for bail and it was granted of which he answered until his conviction on 22nd December, 2016 on both Counts. He was sentenced to 5 years on 1st Count and 2 years on the 2nd Count.
- (6) That he appealed against the decision through his lawyers and a Notice of Appeal was filed in the Court of Appeal.
- (7) That on the 17th February 2017 he applied for bail pending appeal and it was granted.
- (8) That he fulfilled the conditions of bail and never defaulted until judgment delivery on 11th day of March, 2019 when his appeal was dismissed.
- (9) That on the same day again through his lawyers appealed against the decision to this Court and Notice of Appeal was filed on the 13th March 2019 in this Court followed by the Memorandum of Appeal.
- (10) That he was reliably informed by his lawyers that because of the systematic delays to hear the appeal he is likely to serve a substantial portion or even the whole period before the appeal is determined.
- (11) That the age of 64 years in advanced he needs to be attended to 24 hours and his condition cannot be managed when he is in prison.
- (12) That he has no previous Criminal record. He being a resident of Upper Buziga in Makindye Division KCCA, and lives with his family as the bread winner and the offence he was convicted of is bailble.

(13) That he has substantial sureties who already know their responsibilities

The respondent opposed the application and filed an affidavit deposed by one Josephine Namatovu of the office of the DPP. She stated:-

- (1) That she was very well versed with the Court of Appeal, Criminal Appeal No. 29 of 2017 and the instant application.
- (2) The paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 12 in support of the application are not disputed.
- (3) That in reply to paragraphs 13 and 15 of the applicants affidavit in support it was not possible for this Court basing only on that Notice of Appeal and Memorandum of appeal to determine whether the said appeal is not vexatious or frivolous or whether it has any chances of likelihood of success.
- (4) That in reply to paragraphs 15 and 17 of the affidavit in support the assertion that there is likely to be a delay in hearing the appeal was mere speculation and had no factual basis.
- (5) That he has been previously convicted of embezzlement and forgery so he can't be a person of reputable character and his appeal was dismissed.
- (6) That his medical forms from the Superintendent of Murchison Bay Luzira dated 14th November, 2014 was not up to date.
- (7) That the application and the affidavit do not reveal exceptional circumstances to warrant release of the applicant on bail pending appeal.

At the hearing

Mr. Bakole Simon represented the applicant Ms Angom Harriet Senior State Attorney of the DPP office represented the respondent. Both Counsel made oral submissions for and against the application.

I carefully listened to the submissions of both Counsel. I also studied the application and the affidavit in support and the affidavit in opposition of the same. I perused the authorities as supplied by Counsel for the applicant. I perused the documents particularly from the Radiology Department Nsambya, St Francis Hospital dated 19th February 2019 which was signed by Dr. Geoffrey Erem Radiologist. The indication was sudden onset of right weaknesses unsteady gain. One of the findings was that there was an infarct in the left tharlamus (12 x 6mm). Note was also made of multiple small deep white matter hyper intesse lesions on T₂ and T₂ flair more prominent in the vertex. The lesions have fluid restrictions on DW1. On that finding alone this Court could have just granted the prayer sought. But there were other considerations which cannot be overlooked.

The applicant produced sureties who in my view were substantial. The 3rd surety particularly according to her documents, had the capacity to ensure that her husband attends Court. It was not disputed as seen from the affidavit in opposition of the application, that the applicant/ convict has never absconded, breached the bail conditions which both lower Courts imposed. Even after his passport has expired he was faithful to his call. I have no doubt in my mind that he will attend his trial to the end. Besides he is a first offender and the age of 64 years he is at his advanced. According to the record on this file, the appeal cannot be frivolous especially in the absence of evidence to that effect adduced by the respondent. It is not a speculation that there will be substantial delay. Considering the time the case has taken to reach this.

S.40 (2) of the Criminal Procedure Code Act provides:

the appellate Court may if it sees fit admit an appellant to bail pending appeal hearing and determination of the appeal.

Section 132 (4) of the Trial on Indictment Act Cap 23 provides

“except in cases where the appellant has been sentenced to death a judge of the High Court or Court of Appeal may in his or her discretion

in a case in which an appeal to the Court of Appeal is lodged under this Section grant bail pending hearing and determination of the appeal.”

In **Arvind Patel v, Uganda Supreme Court Criminal Application No. 1 of 2003** this Court laid down conditions (though) (underline is mine) not exhaustive which have to be considered before releasing an applicant on bail pending appeal. There are six conditions. Order JSC had this to say **“it is not necessary that all conditions should be present in every case. A consideration of two or more criteria (may be sufficient). Each case must be considered on its own facts or circumstances.”**

Considering all the above and in exercise of this Courts discretion, the applicant is a fit and proper person to grant bail pending appeal on the following terms.

- (1) the applicant is released on bail bond of Shs100,000,000/= (shillings a hundred million) (Not cash)
- (2) The three sureties presented to this Court are also bound in the sum of 100,000,000 (one hundred million) (Not cash).
- (3) The applicant/appellant has to report to the Registrar of this Court once every month beginning from 30th May 2019 till determination of the Appeal.

Dated at Kampala this17th Day of ...April 2019

Justice Faith Mwendha

JUSTICE OF THE SUPREME COURT