

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

[CORAM: DR ESTHER KITIMBO KISAAKYE, JSC]

MISC. APPLICATION NO. 16 OF 2019

IRENE KAUMA ::: APPLICANT

V

UGANDA ::: RESPONDENT

RULING OF DR. ESTHER KISAAKYE, JSC

Irene Kauma (hereinafter referred to as the applicant) filed this application by Notice of Motion seeking for an order that she be granted bail pending the hearing and determination of Supreme Court Criminal Appeal No. 36 of 2019.

The background of this application is that on the 27th of April 2015, the applicant was convicted by the High Court Anti-Corruption Division with 4 offences namely Theft; Conspiracy to commit a felony; Electronic Fraud; and Unauthorized Access. She was sentenced to serve 7 years' imprisonment each on the counts of Theft, Conspiracy to commit a felony, and Electronic Fraud. These sentences were to run concurrently. She was also convicted and sentenced to 9 years' imprisonment on the count of Unauthorized Access.

The applicant appealed to the Court of Appeal, which acquitted her of the offences of Conspiracy to commit a felony and Electronic Fraud but upheld her convictions and sentences for Theft and Unauthorized Access.

Dissatisfied with part of the judgment of the Court of Appeal, the applicant filed a Notice of Appeal on 16th November 2019 and the present application for bail pending appeal on 18th November 2019.

The applicant was represented by Ms. Harriet Angom, while the respondent was represented by Senior State Attorney, Mr. Brian Serunjogi.

Applicant's Submissions

Relying on Article 126(2)(e) of the 1995 Constitution as amended and Rules 2(2), 6(2), 42 and 43 of the Supreme Court Rules, counsel for the applicant submitted that rule 6(2)(a) gives Court discretionary powers to grant bail pending appeal.

Counsel further relied on ***Arvind Patel v Uganda, Supreme Court Misc. Application No. 1 of 2003*** and summarized six considerations that generally apply to an application for bail pending appeal. She contended that 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) that the appeal should not be frivolous and

should have a reasonable possibility of success; v) the possibility of substantial delay in the determination of the appeal, and lastly vi) whether applicant has previously complied with bail conditions granted after his or her conviction.

Relying on the conditions summarized above, which emanate from the **Arvind Patel v Uganda** (supra) and the applicant's Affidavit in support respectively, counsel for the applicant contended that:

- (i) the applicant had complied with the bail terms imposed by the Court of Appeal until the final disposal of her appeal.
- (ii) the applicant's appeal has a likelihood of success.
- (iii) the applicant was of good character.
- (iv) the applicant was a first offender.
- (v) there was a likelihood of substantial delay.
- (vi) Court sentenced the applicant to 7 years imprisonment without numerically deducting the period that she had spent on remand. Counsel submitted that by reducing only 2 years, the sentencing Judge did not include the 8 months.
- (vii) she has a fixed place of abode at Bugembe town Council, Budumbuli East Ward, Commercial Zone Local Council 1; Jinja District within the Jurisdiction of this Court. She relied on the letter from the Local Council Chairman of the area annexed to the Notice of Motion, as proof that she had lived in the area for a while.

(viii) she has four sureties who were ready and willing to stand for her. These were:

- a) her biological father, Kisukiro Steven Henry, aged 72 years who is a resident of Bugembe Town Council, Budumbuli East Ward;
- b) her paternal uncle Joseph Wekikye, who is a resident of Bugolobi Housing Estate, Nakawa Division, Kampala;
- c) her close family member and wife to the second surety, Wekikye Lillian Kaala, and a resident of Bugolobi Housing Estate, Nakawa Division, Kampala; and
- d) her biological brother, Mwambala Joseph Henry, aged 42 years who is a resident of Kiwatule Parish, Nakawa Division Kampala.

Citing other single Justice rulings, namely ***Serunkuuma Edrisa Vs Uganda, Supreme Court Misc. Application NO.0147 OF 2019*** and ***Segujja Danny and Anor v Uganda, Supreme Court Application No. 5 of 2019*** which had allowed the applications for bail pending appeal for the applicant's co-convicts, counsel contended that there was need for this Court to have consistency in its decisions.

She prayed that the fact that her co-convicts had been granted bail as of right, should be persuasive for Court to grant bail to the applicant.

Respondent's submissions

Relying on the Affidavit in reply sworn by Caroline Marion Acio on 16th December 2019, counsel for the respondent opposed the application. He contended:

- (i) that the applicant was already a convict and considering the way the offence of Electronic fraud was committed, the applicant was not of good character. He submitted that the applicant was serving a lawful sentence passed by the High Court (Anti-Corruption Division) and her convictions for Theft and Unauthorized Access had been upheld by the Court of Appeal.
- (ii) that the applicant's appeal was frivolous and vexatious and had no likelihood of success, because her grounds of appeal in this Court did not raise a point of law. He also contended that the applicant's grounds of appeal are the same ones that were rejected by the Court of Appeal.
- (iii) that there was nothing illegal about the maximum sentence the applicant received and that the applicant was therefore barred from pleading illegality of the sentence
- (iv) that he had no objection to the substantiality of the sureties presented, but questioned the applicant's character.
- (v) that while the offences the applicant was convicted of did not involve personal violence, personal violence manifested itself in a different way. Counsel contended

that the offences which the applicant was convicted of were economic crimes.

- (vi) Counsel further contended that the fact that 3,150,000,000/= was wired from MTN Account in 30 minutes caused panic, anxiety, mental torture and stress, which in economic terms amounted to personal violence to the shareholders of the business.
- (vii) that there was no likelihood of delay in disposing of the appeal and that the applicant was relying on speculations not supported by any evidence from a member of this Court.
- (viii) that the decisions of the other single Justices of this Court were not binding and that each case had to be decided on its own facts.
- (ix) Counsel further contended that of all the convicts, the applicant was the only one facing a 9 year term and that this would cause a higher temptation for the applicant to abscond, compared to the other co – convicts who had 7 year terms.

Lastly, counsel for the respondent prayed that the applicant's appeal be fixed and expeditiously determined on its merits and that in the alternative, if Court found it fit to grant bail, it should impose harsher terms than those imposed by the Court of Appeal.

Applicant's submissions in Rejoinder

In rejoinder, counsel for the applicant contended that the respondent's submissions on the possibility of absconding were purely speculative. He contended that the applicant's character and law abiding nature, her undertaking to comply with bail terms if Court granted it and that the fact that her passport was still in Court, were all in favour of the applicant's non-absconding.

Counsel for the applicant relied on ***Arvind Patel v Uganda*** (supra) and stressed that the main point Court should consider was the likelihood of the applicant to appear for the hearing of her appeal.

CONSIDERATION OF THE APPLICATION

The application was brought under Article 126(2)(e) of the Constitution of the Republic of Uganda 1995 and 2006 as amended; Rules 2(2), 42 and 43 of the Judicature (Supreme Court Rules) Directions SI 13-14.

Counsel for the applicant relied on the decision of Oder JSC in ***Arvind Patel v Uganda (supra)*** which he contended laid down the conditions that generally apply to an application for bail pending appeal.

I have carefully considered the submissions and authorities relied on by both counsel while arguing this application. In my Ruling in ***Magombe Joshua v Uganda, Misc. Application No. 11 of 2019***, I extensively discussed the Constitutional provisions, as well as the other laws relating to applications for bail pending appeal. I also discussed the right to non-deprivation of personal liberty.

In the same Ruling of (*Magombe supra*), I also analysed and discussed the long standing authority of *Arvind Patel v Uganda (supra)* which has been relied on by applicants for bail pending appeal in this Court. I stand by my conclusion that:

- i. There is no constitutional provision permitting the seeking of and the granting of bail to a person who has already been convicted of a criminal case.
- ii. Arvind Patel was wrongly decided.
- iii. Rule 6(2)(b) of the Supreme Court Rules is void for being inconsistent with the Constitution.

I note that the applicant was jointly convicted with Magombe.

For the same reasons I gave in my Ruling in *Magombe (supra)*, I have found no merit in the submissions of the applicant. I decline to grant the applicant bail pending the determination of her appeal. The applicant should continue serving her sentence.

Dated this 14th day of October 2020


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Hon. Dr. Esther Kitimbo Kisaakye
Justice of the Supreme Court