

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
[CORAM: DR ESTHER KITIMBO KISAAKYE, JSC]

MISC. APPLICATION NO.15 OF 2019

NAKIWUGE RACHEAL MULEKE :::::::::::::::::::::::::::::::::::APPLICANT

V

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

RULING OF DR. ESTHER KISAAKYE, JSC

Nakiwuge Rachel Muleke (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 her appeal in this Court.

The brief background to this application is that on the 8th of July 2015, the applicant was convicted by the High Court Anti-Corruption Division with 3 offences namely Embezzlement; False Accounting; and Forgery. Each count had an alternative count of uttering false documents. She was sentenced to serve three and a half years' imprisonment each on the count of Embezzlement and 15 months' imprisonment on the counts of False Accounting and Forgery. These sentences were to run concurrently. The applicant was also disqualified from holding public office for a period of 10 years from 15th July 2015.

The applicant's appeal to the Court of Appeal was dismissed. Dissatisfied with the judgment of the Court of Appeal, the applicant filed a Notice of Appeal on the 6th November 2019 and this application on 20th November 2019 seeking for bail pending the hearing and determination of her appeal by this Court.

The applicant was represented by Mr. Justin Semuyaba, while the respondent was represented by a senior State Attorney, Deborah Itwau.

Applicant's Submissions

The applicant relied on Articles 2, 23(1)(a), 28(1) and 126(2) of the 1995 Constitution; Rules 6(2)(a), 42(1) and 43 of the Supreme Court Rules; Sections 40(1)(2)(3)(4)(5) and (6) of the Criminal Procedure Code Act and Section 132(4) of the Trial on Indictments Act.

Counsel for the applicant further relied on ***Arvind Patel v Uganda, Supreme Court Criminal Application No. 1 of 2003*** and summarized six considerations that generally apply to an application for bail pending appeal. She contended that these considerations include the following:

- (i) the character of the applicant;
- (ii) whether the applicant is a first offender or not;
- (iii) whether the offence which the applicant was convicted of involved personal violence;

- (iv) whether the appeal is not frivolous and has 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 considerations summarized above, and the applicant's Affidavit in support respectively, counsel for the applicant contended that:

- (i) the applicant's conduct while on bail which was granted in the lower Courts was compatible with the bail practices.
- (ii) the offences for which the applicant was convicted of did not involve personal violence.
- (iii) the applicant was a first time offender and had no criminal antecedents.
- (iv) the hearing of the applicant's appeal now pending before this honorable Court is likely to delay.
- (v) she has a fixed place of abode at Komamboga Central Zone, Kawempe Kampala, where she and her husband own a matrimonial home within the jurisdiction of this Honorable Court.
- (vi) she has sound and substantial sureties who were willing and ready to stand for her. These are:
 - (a) her husband, Herbert Rutagwera, a resident of Komamboga Parish, Kawempe Division;

- (b) her friend and workmate, Esther Kalibbala Wanyana, a resident of Namungoona Zone 1 Local Council 1;
- (c) her sister in law, Harriet Kyomugisha, a resident of Kawempe Division, Kikaawa Parish, Kanisa Zone; and
- (d) her family friend, Bamwine Tumwine Alfred Joshua, a resident of Kyambogo Upper Estate, Nakawa Division.

Copies of identification documents and introduction letters for the proposed sureties were tendered in evidence at the hearing.

Counsel for the applicant further submitted that all the four sureties were substantial because they had stood as sureties for the applicant before and therefore they knew their duties.

Counsel for the applicant further contended that the applicant had fulfilled the conditions which are set out in **Arvind Patel v Uganda** (supra). Counsel for the applicant also relied on other Rulings which followed the Ruling in **Arvind** where bail pending appeal was granted which included *Kimeze Jeremiah v Uganda, Misc Application No. 12 of 2019*; *Sserunkuuma Edrisa v Uganda, Misc Application No. 09 of 2019*; *Ssegujja Danny & Anor v Uganda, Misc. Application No. 05 of 2019*; *Sumbu Jean Louis v Uganda, Criminal Application No.1 of 2019* and *Kyeyune Mitala Julius v Uganda, Misc. Application No. 4 of 2017*.

Counsel for the applicant further relied on *Uganda v Col (Rtd) Dr. Kiiza Besigye, Constitutional Reference No. 20 of 2005* and prayed that this application be allowed.

Respondent's Submissions.

Relying on the Affidavit in reply sworn by Harriet Angom on the 17th December, 2019, counsel for the respondent opposed the application. She contended that:

- (i) the particulars of sureties that the applicant intended to rely on had not been provided by the time she made a response to this application and therefore she had not verified them.
- (ii) although the offence which the applicant was convicted did not involve personal violence, financial crimes especially theft of Government funds are peculiar in nature and grave.
- (iii) as the National Coordinator, the applicant was charged with the resettlement of Bududa landslide victims, but instead embezzled the funds which questions her character.
- (iv) the Court of Appeal upheld the applicant's conviction. She contended that therefore applicant's compliance with the bail terms in the lower Courts was no longer relevant to the Supreme Court and that if the applicant absconded, the interest of justice for the people of Bududa would not be served.
- (v) there was no possibility of delay of hearing the applicant's appeal, since this application had been expeditiously fixed.

Counsel submitted that this Court is fully constituted and did its work in an efficient manner and that the applicant's appeal had no chance of success as a second appeal.

Applicant's submissions in rejoinder

In rejoinder, counsel for the applicant contended that they had cited five authorities, all of which involved financial crime but where bail pending appeal was granted.

Counsel for the applicant also contended that paragraph 6 of the respondent's Affidavit in reply acknowledged that offences which the applicant was convicted of, did not involve personal violence.

Counsel for the applicant further contended that counsel for the respondent should have submitted a sworn affidavit from a victim of Bududa. He contended that the applicant had not been convicted of making people suffer, but rather false accounting otherwise, there was value for money.

On the issue of likelihood of delay, counsel for the applicant contended that it is known that all Courts have backlog and that preparation of records takes time.

CONSIDERATION OF THE APPLICATION

The application was brought under Articles 2, 23(1)(a), 28(1) and 126(2) of the 1995 Constitution; Rules 6(2)(a), 42(1) and 43 of the

Supreme Court Rules; Sections 40(1)(2)(3)(4)(5) and (6) of the Criminal Procedure Code Act and Section 132(4) of the Trial on Indictments Act.

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

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 have considered the submissions and authorities relied on by both counsel while arguing this application. 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 this12th..... day of ..October..... 2020

.....Esther Kitimbo Kisaakye.....
Hon. Dr. Esther Kitimbo Kisaakye; JSC