

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

**MISC. APPLICATION NO. 07 OF 2020**

**Arising from Criminal Appeal NO. 078 of 2019**

**Between**

**OCEPA GEOFFREY ..... APPLICANT**

**And**

**UGANDA ..... RESPONDENT**

**Before: Lady Justice Faith Mwendha (Single Justice)**

**RULING OF COURT**

The applicant filed this application by way of Notice of Motion and was supported by grounds in the affidavit deponed by the applicant.

The application was brought under rule 6 (2) (a) 43(I)(2) and 44 of the rules of this Court for bail pending determination of the appeal I wish to point out on the onset that the application ought have been brought under S.40 (2) of the Criminal Procedure Act among others, not rule 6(2)(a)

Briefly the grounds were that:

- (1) The offence he was convicted of did not involve personal violence.
- (2) The appeal was not frivolous or vexatious
- (3) The applicant was suffering chronic illness of Hypertension, Diabetes, and liver cirrhosis which are medical conditions that cannot be managed in a prison environment.
- (4) That the applicant was granted bail at the Court of Appeal and did not at any one time skip until the determination of the appeal.
- (5) That the applicant has substantial sureties who understood their roles as sureties and are ready to stand for him.
- (6) That the applicant has a specific place of aboard

(7) That its just and fair that the applicant be granted bail pending determination of the appeal.

The respondent filed an affidavit in reply opposing the application deponed by one Vicky Nabisenke of the DPP and she stated among others as follows:-

- (1) That the applicant was charged with the offence of embezzlement and was convicted by the High Court and the conviction was upheld by the Court of Appeal.
- (2) That there is no likelihood of delay since the Court is fully constituted and the appeal can be heard speedily.
- (3) That the offence is grave in nature as Shs295,190,600/= was unaccounted for and resulted into deprivation of health services of the residents of Apach District.
- (4) That the medical report will be challenged.
- (5) That there is no sufficient proof of fixed place of aboard.

At the hearing, the Applicant was represented by Mr. Adoko Joe Fay of Opyene and Co. Advocates and Ms Joanita Tumukirize represented the respondent.

**Both Counsel filed written submissions:**

Briefly Counsel for the Applicant, submitted that the applicant was convicted by the High Court and appealed to the Court of Appeal but the appeal was dismissed. He had filed an appeal in the Court of Appeal against conviction and sentence. He filed a Notice of Appeal in the Supreme Court No 078 of 2019 and a Memorandum of Appeal.

Counsel for the applicant relied on the case of Arvind Patel v. Uganda Criminal Appeal No. 1 of 2003 which was amplified in the case of **David Chandi Jamwa v. Uganda Misc. Application No 9 of 2018.**

The Court in the Arvind case set out some conditions of which Court can consider in dealing with such applications.

I hasten to add that not all conditions have to exist two or three can suffice since each case is decided on its own facts and circumstances. The conditions are:

- (1) Character of the applicant
- (2) Whether he or she is a first offender
- (3) Whether the offence of which the applicant was convicted involved personal violence.
- (4) The appeal is not frivolous or vexatious and there is reasonable possibility of success
- (5) Whether there is a possibility of substantial delay in the determination of the appeal
- (6) Whether the applicant has complied with bail conditions granted after applicants conviction and during the pendency of the appeal. Counsel submitted that according to the Memorandum of Appeal he attached the appeal was not frivolous or vexatious. He also submitted inter alia that there is possibility of substantial delay in the determination of the appeal because of the practice of first come first serve. Considering that there are many appeals which were filed before the instant one there is no guarantee that it will be heard expeditiously. Counsel also submitted that the offence did not involve personal violence as it arose from the roles he has been performing in the accounting Department of Apach District Local Government.

Counsel further submitted that the applicant was sick even before imprisonment. His health is at stake given the conditions of feeding, accommodation and medical treatment. That he has lived in those conditions for 15 years. The photocopies of the medical reports were attached on the affidavit in support of his application marked E, F, G. He submitted further that the applicant has fixed place of aboard in Agulu Cell Wormwaka Ward. He has a National ID which one on record.

The Applicant produced sureties, one George Otim Ochepe his father who was a retired Civil Servant at the rank of Senior Health Inspector of 72

years. He is a resident of Agulu Cell Wormwaka Ward – Agulu Division. He was surety in the previous cases where bail was granted. Also the particulars are on record.

He also produced one Robert Opio aged 54 a Senior Accounts Assistant at Kwanja District who was a paternal uncle also bears a **NID No. CM9600110422PD**.

He also produced one Okumu Deogratius aged 34 years a nursing officer in Apach District Local Government a resident of Agulu Cell Wormwaka Ward, Agulu Division. He hold **ID No. CM86001102YJ9K**. He prayed that those sureties are found substantial so that the Applicant is granted bail pending determination of the appeal.

Counsel for the respondent apposed the grant of bail and submitted among others that the funds the applicant embezzled resulted into the people of Apach being denied health services.

She submitted also that there will be no delay in hearing the appeal since the Court is fully constituted. JS

She submitted that there is no proof on file to show that the applicant's diseases were out of control and beyond management by the prisons.

She submitted that the applicant's grounds lacked merit. She prayed that the bail pending determination of the appeal be denied.

I perused the affidavits considered the written submissions and attentively listened to the highlights in their submissions.

It is trite law as set out in the cases of Arvind supra, that there are conditions which have to be taken into account in applications like the instant one. Oder (JSC) stated that not all those conditions as set out at

page (3) of this ruling should exist before delay whether or not the application is granted. Two or three of them suffice.

I find that the applicant has produced substantial sureties and he has a fixed place of abode at Agulu Cell Division Apach District. Where he has been living with his father, surety one and the other sureties. So it is not true that the applicants fixed place of abode had not been proved.

It is emphasised that all the sureties produced live in the same area and they appear to be people of good standing in society.

The applicant despite the fact that he was convicted and was granted bail pending appeal by the Court of Appeal, further demonstrate or show that he will not abscond.

I therefore grant the applicant bail pending determination of the appeal in the following terms.

(1) The applicant to be bound the amount of Shs20,000,000/= (shillings twenty million) not cash.

(2) Each surety to be bound in the amount of Shs10,000,000/= not cash.

Applicant to be appearing in Court fortnightly starting from 10<sup>th</sup> December until determination of the appeal, or until any other order from this Court.

Dated at Kampala, this 26<sup>th</sup> day of November..... 2020

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Signed Mwendha

**JUSTICE OF THE SUPREME COURT**