

UGANDA / JUDGMENT

Kintu v Uganda (Criminal Miscellaneous Application 413 of 2024) [2024]

UGHCCRD 76 (14 November 2024)

[2024] UGHCCRD 76

COURT

HC: Criminal Division (Uganda)

BEFORE

Muwata, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 413 of 2024

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL DIVISION CRIMINAL MISCELLENOUS APPLICATION NO.413 OF 2024
ARISING FROM THE CHIEF MAGISTRATES COURT OF NAKAWA AT NAKAWA
CRIMINAL CASE NO.330 OF 2024**

KINTU ERISA----- -APPLICANT

VERSUS

UGANDA RESPONDENT

RULING BEFORE HON: JUSTICE ISAAC MUWATA

The applicant brought this application seeking reinstatement of bail granted to him vide Criminal Case No.330 of 2024. The applicant also seeks to set aside the order of the learned trial Chief Magistrate cancelling the bail granted to him.

The grounds of the application are contained in the affidavit in support attached to the application and I shall briefly restate them in summary. The applicant contends that he was charged with two offences to wit; unlawful occupation of land contrary to section 89(1)(c) of the Land Act and Criminal trespass contrary to section 282 of the Penal Code Act.

The applicant contends that on the 10th day of July 2024, the applicant was granted bail and deposited a cash bond of UGX.1, 200,000/=. He stated that he appeared before the Chief Magistrate at all times as indicated in his bail bond forms. He states that when the matter came up for hearing on the 28th day of August, 2024, the bail granted to him was cancelled on the sole basis that a Police officer had sworn an affidavit claiming that he was interfering with the investigations.

The applicant states that no evidence of interference was adduced as alleged and that he was not given a chance to defend himself on the said allegations before

the same could be cancelled. It was his evidence that he was not served with the said affidavit containing the allegations.

It also his evidence that the said affidavit was never presented in court as evidence and the prosecution had failed to prove that he had not complied with the conditions of the bail. The applicant also states he could have interfered with the investigation since the matter had been set for hearing and the investigations concluded. He also stated the court did not ever issue criminal summons to compel him to attend court at any given time and as such it is in the interests of justice that the bail be reinstated and he be allowed to defend himself while on bail.

In reply, the prosecution conceded to the assertions raised by the applicant. He did not object to the reinstatement of the bail but prayed that the applicant be cautioned not to interfere with prosecution witnesses.

Mr. Fahad Siraje appeared for the applicant while Mr. Timothy Amerit appeared for the respondent. They both filed their submissions which I have given due consideration

Consideration.

Article 23(6)(a) of the Constitution provides that a person arrested in respect of a criminal offence has a right to apply for bail and the court may grant such person bail on such conditions it considers reasonable.

The rationale behind the grant of bail is in respect to upholding one's right to personal liberty as provided for in Article 28(3) of the Constitution. The cancellation of bail therefore essentially interferes with the liberty already secured by the accused and the power to take back in custody an accused who has been released on bail has to be exercised with care and upon compelling reason.

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Rule 20(2) of the Constitution (Bail Guidelines for Courts of Judicature (Practice) Directions 2022 provides for the grounds that the court may cancel bail. They include; where the accused person has breached the bail conditions, where a surety withdraws from being a surety and the accused person fails to provide another sufficient surety or for any other reason that the court may deem satisfactory.

It follows therefore that once bail has been granted, it can only be cancelled upon satisfaction of the court that there has been a breach of the conditions set by it or of law. See *Ugonda V Lawrence Luzinda* [1986] HCB 33, *Kaayo Vincent V Uganda HCCMA No.409 of 2023*.

Furthermore, the rules of natural justice demand that before an accused's bail is cancelled, the accused should be afforded a fair hearing. There must be evidence presented and the accused must be given an opportunity to respond to such evidence before a decision is made to cancel the bail. Mere speculation without proof is not sufficient reason to cancel bail.

In the case of *Florence Nansikombi V Uganda* 1977 HCB 107, it was held that "mere suspicion that some person was tampering with evidence without formal proof in open court was not reason grave enough for cancellation. The court went on to state that evidence should be adduced in court to prove the ground on which the cancellation of the bail is being sought and that the rules of natural justice would demand that the accused is heard before the decision to cancel bail is made".

Similarly in this case, the applicant stated that he was not given a chance by the court to defend himself on the allegations of interference contained in the affidavit deposed by No.42081 D/SGT Okabo Patrick Boniface. The applicant further stated the prosecution did not adduce any evidence that he was interfering and if there was any evidence, he ought to have been first heard before a decision

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to cancel his bail was made. The respondent conceded and admitted in para 6 of his reply that the cancellation of the applicant's bail offended the rules of a fair hearing. The right to a fair hearing is a non-derogable right under Article 44(c) of the Constitution and therefore ought to have been accorded to the applicant to test the veracity of the averments contained in the affidavit of the Police Officer who claimed that the applicant was interfering with the investigations.

Furthermore, there was no evidence of any application by the prosecution to cancel the bail and the applicant's lawyers were also not aware of any application to cancel his bail. While the court reserves the discretion to cancel bail at any time, the same must be done in accordance with the accused's right to a fair hearing enshrined under Article 28 of the Constitution and upon proof that the bail conditions have been breached.

In this case, the applicant was not accorded a fair hearing in light of the claims of the Police officer who deposed the affidavit which formed the basis of the bail cancellation. I find that it was erroneous to cancel the bail on that basis without hearing the applicant. Accordingly I find merit in the application and hereby reinstate the bail granted to the applicant on the same terms and conditions as imposed by the trial court.

It is the order of the court that the bail be reinstated.

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