

UGANDA / JUDGMENT

Nkula Moses v Uganda (Criminal Application No. 57 of 2008) [2008]

UGCA 13 (24 November 2008)

[2008] UGCA 13

COURT

Court of Appeal of Uganda

CASE / FILE NUMBER

Criminal Application No. 57 of 2008

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\par [CORAM:\tab ENGWAU, J. A]

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 \pararsid4664273 {\f175\fs24\insrsid4400607\charrsid1057438 (Arising from Criminal Appeal
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 \pararsid4664273 {\insrsid4400607 This is an application for }\insrsid10315886 an order granting
 bail to the applicant pending the determination of his ap}{

\insrsid1057438 peal to this Court in Criminal A}{\insrsid10315886 ppeal No.62 of 2008. }
 {\insrsid6685492 It is brought under }{\b\insrsid6685492\charrsid16014065 rules 6(2

) (a), 42, 43 and 44 of the Rules of this Court and section 132(4) of the Trial on Indictment Act.}
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\par The applicant\rsquote s affidavit in support of the application shows that he was initially
 charged with the offence of murder but was convicted, after a trial, of

the lesser cognate offence of manslaughter, and sentenced to 5 years imprisonment by the High
 Court at Kampala on 4.6.2008. He filed a Notice of appeal in this Court on 5.6.2008 and thereafter
 lodged a memorandum of appeal on 24.9.2008.

\par

\par Mr. Kafuko-Ntuyo, the applicant\rsquote s learned counsel, argued four grounds in support of
 {\insrsid1057438 f the application. The first i}{\insrsid6685492 s that due to the busy schedule of
 work }{\insrsid1057438 in the Court of Appeal, there i}{

\insrsid6685492 s a possibility of substantial delay in hearing the appeal.

\par

\par The second is that the applicant attended his trial at the High Court while on bail. Mr.
 Kafuko-Ntuyo pointed out that the applicant did not violate the terms and conditions of his bail
 until he was convicted and sentenced }{\insrsid1057438

by the High Court}{\insrsid6685492 .

\par

\par The third is that the appeal is not frivolous. According to counsel, the appeal has high chances of success }{\insrsid16014065 as death was accidentally caused.}{\insrsid6685492

\par }{\insrsid16014065

\par Last ground but not least is that this Court has discretion to release the applicant on bail on its own terms and conditions.

\par

\par Learned counsel referred me to the Supreme Court decision of }{\b\insrsid15161583 Arv}{\b\insrsid16014065\charrsid16014065 ind Patel vs Uganda No.1 of 2003}{\insrsid16014065

in which Order, JSC (RIP) set out guidelines upon which a person serving a prison sentence pending appeal may be released on bail. Counsel further referred me to the rulings of my learned brother, Hon. Justice Nshimye, JA in }

\b\insrsid16014065\charrsid15161583 Nsubuga Gerald & Anor vs Uganda}{\insrsid16014065 , }{\b\insrsid16014065\charrsid15161583 Criminal Application No.37 of 2008}{\insrsid16014065 and in }{\b\insrsid16014065\charrsid15161583

Nalukenge Muldred vs Uganda, Criminal Application No.56 of 2008}{\insrsid16014065 in which }{\insrsid77821 the learned judge granted bail following the principles laid down in }{\b\insrsid77821\charrsid15161583 Arvind Patel case (supra).}{

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\par }{\insrsid15161583 In his affidavit, the applicant stated that he has a permanent place of abode at Keti Fallawo Zone, Kawempe wher}{\insrsid1057438 e}{\insrsid15161583 he has a residential house where he lives together with his wife and two children.

\par }{\insrsid11880307

\par Learned counsel also introduced}{\insrsid1057438 to the c}{\insrsid11880307 ourt prospective sureties for the applicant if he were granted bail. First, the applicant\quote s wife, Norah Ntono, }{\insrsid1057438 a }{\insrsid11880307

shopkeeper resident }{\insrsid1057438 at}{\insrsid11880307 Makerere Zone 1. The second one is the applicant\quote s sister}{\insrsid3294673 , Jackline Taweeka, Co-operative Executive with New Vision, and a resident of Makerere Zon}{\insrsid1057438

e 1. The third one is Mr. Bombo}{\insrsid3294673 ka Joshua, a friend of the applicant and businessman in Kikuubo, residing at Mpererwe. Counsel prays that this application be allowed.

\par

\par Mr. William Byansi, learned Principal State Attorney for the respondent, opposed the application for the following reasons:-

\par

\par First, that the applicant has not proved exceptional circumstances for his release on bail pending determination of his appeal. Learned Principal State Attorney pointed out that the grounds advanced by the applicant are the usual grounds before conviction.

\par

\par Secondly, counsel for the applicant submitted that there is a possibility of substantial delay in hearing of the appeal. Learned Principal State Attorney responded that likely delay of hearing the applicant\quote

s appeal was speculation. The applicant is sentenced to 5 years imprisonment. According to Mr. Byansi, the applicant\quote s appeal will have been heard by then.

\par

\par Thirdly, regarding the {\insrsid4664273 possibility}{\insrsid3294673 of success of the applicant\quote

s appeal, learned Principal State Attorney submitted that the appeal is frivolous and intended to delay the cause of justice. Learned counsel pointed out that the death of the deceased was not accidentally {\insrsid12875850

caused. The evidence on record shows that the

applicant assaulted the deceased and medical report shows that multiple injuries were inflicted on the body of the victim. Counsel further contended that the applicant failed to give court guidance as to how his appeal is likely to succeed.

\par

\par The fourth reason is that the offence with which the applicant was convicted involved personal violence. In support of that argument, learned Principal State Attorney relied on the decision of the Supreme Court {\insrsid12875850\charrsid1057438 in}{

\b\insrsid12875850\charrsid12875850 Arvind Patel vs Uganda,}{\insrsid12875850 }

{\b\insrsid12875850\charrsid1057438 Criminal Application No.1 of 2003.}

{\b\insrsid5586223\charrsid1057438 }{\b\insrsid8726829\charrsid1057438

\par }{\insrsid8726829

\par Last but not least, learned Principal State Attorney conceded that the applicant was released on bail by the High Court while writing for his trial. Nevertheless, that in itself does not entitle the applicant who is a convict to be released on bai

1. In counsel\’s view, the applicant who is serving a prison sentence of 5 years is likely to abscond.

\par

\par Regarding the sureties presented to the court, Mr. Byansi submitted that they are not substantial. Learned counsel pointed out that the applicant\’s wife has no number on her identity card and the village from where she hails is not clearly stated.

\par

\par Learned Principal State Attorney had no objection to the second surety, the sister of the applicant, an Executive Officer with the New Vision. However, learned counsel pointed out that the 3}\super\insrsid8726829\charrsid8726829 rd}\insrsid8726829

surety, Mr. Bomboka Joshua, was not substantial. His identity card expires on 6.01.2009, and whereas he claims to be a resident of Mpererwe but his identity }\insrsid2961113 card is for Kanyanya-Kikuubo. In his final prayer, counsel as

ked for dismissal of the application.

\par

\par This court has jurisdiction to grant bail to any convicted person, who has lodged a criminal appeal to court before the appeal is determined. Rule 6(2)(a) of the Court of Appeal provides:-

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of this rule, the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the court may ____

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\b\insrsid2961113\charrsid9177238 in any criminal proceedings, where notice of appeal has been given in accordance with rule 59 or 60 }\b\insrsid11014165\charrsid9177238 of these Rules, order that

the appellant be released on bail or that the execution of any warrant of distress be suspended pending the determination of the appeal\94.}\b\insrsid2961113\charrsid9177238

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\par Section}\insrsid2190084 132(4) of the Trial on Indictment Act provides:-}\insrsid11014165

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{\b\insrsid9177238\charrsid9177238 Except in a case where the appellant has been sentenced to death, a judge of the High Court or the Court of Appeal may, in his or her or its discretion, in any case in which an appeal to the Court of Appeal is lodged under this section, grant bail, pending the hearing and determination of the appeal\94.}\

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\par It is clear to me from the above provisions that grant of bail is a discretionary jurisdiction, which should be exercised judiciously.}\insrsid13330796

Considerations which should generally apply to an application for bail pending appeal may be summarized as follows:}\insrsid9177238

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\b\i\insrsid13330796\charrsid1057438 the character of the applicant;

\par {\listtext\pard\plain\b\if1\fs28\insrsid13330796\charrsid1057438 \hich\af1\dbch\af0\loch\fi (ii)\tab}whether he or she is a first offender or not;

\par {\listtext\pard\plain\b\if1\fs28\insrsid13330796\charrsid1057438 \hich\af1\dbch\af0\loch\fi (iii)\tab}whether the offence of which the applicant was convicted involved personal violence;

\par {\listtext\pard\plain\b\if1\fs28\insrsid3739154\charrsid1057438 \hich\af1\dbch\af0\loch\fi (iv)\tab}}{\b\i\insrsid3739154\charrsid1057438 the appeal is not frivolous and has a reasonable possibility of success;

\par {\listtext\pard\plain\b\if1\fs28\insrsid3739154\charrsid1057438 \hich\af1\dbch\af0\loch\fi (v)\tab}the possibility of substantial delay in the determination of the appeal;

whether the applicant has complied with bail conditions granted after the applicant's conviction and during the pendency of the appeal.

The above principles were set out in the Supreme Court in the case of *Arvind Patel vs Uganda, Criminal Application No.1 of 2003*

. The Supreme Court further stated that it is not necessary that all those conditions should be present in every case. A combination of two or more criteria may be sufficient. I agree entirely.

In the instant application, this Court was not addressed about the character of the applicant. Nonetheless, I have endeavoured to peruse the record of proceedings in the High Court and found thus:

A closer examination of the post-mortem report shows that the deceased

sustained more than one injury on the head as well as minor abrasion on the right fore-arm. The larger abrasion was on the left side of the head measuring 4.5x0.3cm that was surrounded by a swelling measuring 6x4cm

.. These injuries are extensive and serious. The injuries are most consistent with an assault. On the evidence, I am convinced that the injuries were not sustained in an accidental fall but in an atrauma-an assault. Death was due to unlawful act.

It is clear from the evidence

on record that the deceased met his death after the applicant had assaulted him. Though the applicant is a first offender, the offence with which he was convicted involved personal violence. As to whether the appeal has a reasonable possibility of success,

I was not guided on the matter sufficiently by counsel for the applicant.

\par The applicant was convicted of manslaughter and sentenced to 5 years imprisonment on 4.6.2008. Counsel for the applicant conceded that after lodging the appeal in this Court, he has not asked for it to be fixed for hearing. In my view, the possibility of substantial delay in the determination of the appeal, is mere speculation.

\par

\par Regarding the sureties introduced to the court, only one surety, the sister of the applicant, is subst

antial. The applicant is a convict serving a sentence of 5 years imprisonment. There is need, therefore, for him to present substantial sureties to ensure that he will attend court when released on bail. His previous release on bail by the high Court b

efore his conviction, in itself, is not sufficient ground that he should be released also by this Court.

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\super\insrsid8916942\charrsid8916942 th}}{\insrsid8916942 }}{\insrsid3164640 day of }{\insrsid8916942 November}}{\insrsid3164640 2008.

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Prepared on 12 October 2026 · Esheria