

UGANDA / JUDGMENT

Opolot and Others v Uganda

(Miscellaneous Application No. 27 of 2022) [2023] UGHCCD 68 (16 March 2023)

[2023] UGHCCD 68

COURT

HC: Civil Division (Uganda)

BEFORE

Adonyo, J

CASE / FILE NUMBER

Miscellaneous Application No. 27 of 2022

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The Republic of Uganda

In the High Court of Uganda at Soroti

Miscellaneous Application No. 0027 of 2022

(Arising from Miscellaneous Application No. 34 and 44 of 2020)

(Arising from AA No. 19/2020 Serere CRB No. 285 of 2020)

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- 1. Opolot Sam Alias Eramu 10
- 2. Okwero Simon Peter
- 3. Auma Mary
- 4. Omedel Eric
- 5. Opolot Sam

 $\$S\$\mathit{\text{S}}$ **Versus**

Uganda ::::::::::::::::::::

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

This is an application by way of notice of motion brought under Article 20.

- 21, 23 (6)(a)(c), 28(3), 44(c) of the Constitution and section 14 and 15 of 20 the Trial on Indictment Act, Rules 2 & 2 of the Judicature (Criminal Procedure) (Applications) Rules for orders that the applicants bail be reinstated pending trial upon such terms and conditions as this honourable court deems fit.
- The grounds of this application as set out in the application and 25 supporting affidavits are briefly that the applicants were jointly charged with aggravated robbery and malicious damage to property and detained in Serere government prison in 2020, they applied for bail and it was granted.

They were required to appear before the Grade 1 Serere Magistrate Court S and on 14th October 2022 in response to their obligation to appear before the Grade 1 they were re-arrested and committed for trial before this court.

The purpose of the re-arrest was for purposes of committal for trial. The applicants have fixed places of abode, substantial sureties and it is in the 10 interest of justice that their bail is reinstated pending trial.

There is no affidavit of reply on record by the respondent despite service of the application on the respondent.

Counsel for the Applicant M/s Atigo and Co. Advocates submitted that the applicants all have substantial sureties as indicated in their affidavits and 15 their details are supported by introductory letters and photocopies of their national IDs.

Counsel also submitted while relying on Yali Akbar vs Uganda MA *No. 0004 of 2017* which cited with approval the constitutional decision

in Hon. Sam Kuteesa and two others v The Attorney General 20 **Constitutional Reference No. 54 of 2011** where in considering the provisions of section 168 (4) Magistrate Courts Act it was found that bail granted by a court of competent jurisdiction to a person does not automatically lapse by reason only of the fact that the person is being committed to the High Court for trial. 25

Counsel submitted that bail should be maintained by the court committing the accused persons except where court for sufficient reason considers that bail ought to be cancelled.

Sufficient cause does not include the mere fact of committal and in the instant case the trial Magistrate did not furnish any reason for 30 cancellation of the applicant's bail.

- Section 168 (4) of the Magistrates Court Act provides that if a person $\$S$ committed for trial by the High Court is on bail granted by any court, without prejudice to his or her right to apply to the High Court for bail, the bail shall lapse, and the magistrate shall remand him or her in custody pending his or her trial.
- In *Hon Sam Kuteesa and two others v. The Attorney General*, 10 Constitutional Reference No. 54 of 2011 this provision on automatic lapse of bail by the court committing an accused to the High Court for trial was found to be unconstitutional as it had the effect of condemning that person unheard on whether or not he / she should continue to enjoy the right to liberty, restored to him or her when he / she was first granted the 15 bail. It was found to be inconsistent and in contravention of Article 28 (1) of the Constitution which article is non derogable under Article 44 (c) of the Constitution.
- In *Yali v Uganda Miscellaneous Criminal Application 4 of 2017*: [2017] UGHCCRD 107 Stephen Mubiru J found that the above 20 decision is binding on this court and on all magistrates' courts.

Bail should be maintained by the court committing an accused person except where that court, for sufficient reason, considers that bail ought to be cancelled. Sufficient cause does not include the mere fact of committal.

The committal proceedings were not attached to this application but 25 counsel for the applicant submitted that upon perusal of the proceedings no reason was given by the magistrate for cancelling the bail and as such it would appear that the bail was cancelled on premise of committal under section 168(4) MCA and as indicated in the authority above, such a practice was declared unconstitutional and for this reason the applicants' 30 bail is re-instated pending trial.

- The instant application is one which has merits for it is clear that not only $\$S$ did the magistrate have no powers to cancel bail of the applicants as his court is not the trial court in respect of the offence for which the applicants are charged with but it is clear to me that by cancelling originally granted bail, the magistrate denied applicants their underogable the rights as
- provided under Article 28 (1) and Article 44 (c) of the Constitution of the 10 Republic of Uganda for it is not legally true that because one is committed for trial to the High Court then that is sufficient ground for cancelling already granted bail. Committal for trial to the High Court is not sufficient cause for cancelling bail. The cancelling of bail can only follow if it is proved that there has been breached of any of the condition of bail 15 previously granted or whether there has been any breach of the law in relation to the grant of bail. In the instant matter I find no such circumstances as no such conditions existed.

In the circumstances I find would merit in this application and order that the applicants be released on bail on new bail terms as follows:

1. The applicants to each execute a non-cash bond of Shs. \$1,000,000/= \$.

2. Each of the sureties is to execute a non-cash bond of Shs. \$2,000,000/= \$.
3. The applicants are to report to the Assistant Registrar of this Court on the first Monday of every month beginning the 3rd of April, 2023 until the further orders of this court. 25

I so order.

Hon. Justice Dr Henry Peter Adonyo

Judge

16th March 2023

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