

UGANDA / JUDGMENT

Sseremba v Uganda (Criminal Miscellaneous Application 10 of 2024) [2024] UGHCCRD 45 (4 June 2024)

[2024] UGHCCRD 45**COURT**

HC: Criminal Division (Uganda)

BEFORE

Muwata, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 10 of 2024

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMAPALA
CRIMINAL DIVISION CRIMINAL MISC. APPLICATION NO.10 OF 2024 Arising from
Buganda Road Chief Magistrates Court Criminal Case No.789 of 2023 SSEREMBA
HAMIDU-----APPLICANT**

VERSUS**UGANDA-----****BEFORE HON: JUSTICE ISAAC MUWATA RULING**

The applicant filed this application for revision seeking the following orders;

- 1. That the proceedings in Criminal Case No.789 of 2023 be set aside and a fresh trial be ordered.
- 2. That the bail of the applicant be reinstated as it was cancelled with no legal basis.
- 3. That pre-trial disclosure be ordered to be made to the applicant before the fresh trial commences.

The grounds of the application briefly are that at the commencement of the trial, the accused/applicant applied for disclosure which was never made to him but the trial proceeded without any disclosure. It is also averred by the applicant that the court granted him bail but before he could meet the terms of the bail, the trial magistrate who had taken over the matter cancelled the bail of the accused person without any legal basis.

It is also contended by the applicant that due to this, he has suffered great injustice since the non-disclosure has greatly affected his ability to properly defend himself against the charges. The applicant further contends that he will suffer substantial

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injustice if the trial is not set aside and a fresh trial ordered. It is the applicants prayer, that the trial be set aside and a fresh one ordered. It is also his prayer that an order of disclosure be made to him and that his bail also be reinstated.

In response to the application, the respondent argued that it is indeed true that the applicant was granted bail which was subsequently cancelled. That throughout the time of the grant and the cancellation, the applicant was on remand and never at any time exited prison.

That the prayers for cancellation of bail were made by the prosecution to which the court upheld and that it's within the discretion of the court to cancel bail as long as the grounds for the cancellation are satisfactory to the court. It is submitted by the respondent that the applicant has not suffered any injustice by the cancellation of the bail.

The respondent further argued that before the applicant requested for disclosure, he even went ahead and cross examined two witnesses when they gave their testimonies. That upon requesting for disclosure, the applicant was availed with the CCTV footage report upon which the CCTV analyst based his testimony and that he personally handed over the report/ disclosure to the applicant in open court and he was given time to prepare for the PW3 testimony.

It is further argued by the respondent that the applicant/accused has at all times been self-represented in court and has always cross examined the prosecution witnesses and therefore it not true

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that he has been unable to cross examine any witness during trial and thus there is no reason for a fresh trial to be ordered.

Consideration

Section 48 of the Criminal Procedure Code Act is to the effect that the High Court has the power to call for and examine the record of any criminal proceedings before any magistrate's court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the magistrate's court.

The power is to be exercised only in exceptional cases where there has been a miscarriage of justice owing to: - a defect in the procedure or a manifest error on a point of law, excess of jurisdiction or abuse of power. In exercising its revisional jurisdiction the High Court may cure any irregularity or impropriety. See: Uganda v Okumu & Ors (Criminal Revision No. 0003 of 2018) [2018] UGHCCRD 206

The High Court will however not interfere in an on-going trial by way of revision unless there is a glaring defect in the procedure or a manifest error in law, which has resulted in or threatens to result in a miscarriage of justice.

It is the contention of the applicant that at the commencement of his trial, he applied for disclosure but the same was never made and the trial proceeded without any disclosure hence occasioning a miscarriage of justice.

From the onset of any criminal trial, the prosecution has a legal and binding obligation to supply to the defense all material

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evidence in its possession which it intends to rely on to enable an accused person prepare its defense adequately. The rationale behind this provision is to avoid trial by ambush. It is meant to put both the prosecution and the defense on equal footing so that none is caught by surprise. See: Soon Yeon kong kim and another v. Attorney General, Constitutional Reference No. 6 of 2007

The duty to provide disclosure to an accused Person and the trial Court's duty to ensure compliance is in line with Article \$28(3)\$ (c) of the Constitution which provides for the right to adequate time and facilities for the preparation of one's defense which includes also the right to receive beforehand the evidence that the prosecution intends to adduce against the accused person. This right includes the right to receive a copy of the charge sheet, witness' statements and copies of any documents which will be relied on at the trial.

However, an accused person has an obligation to bring it to the attention of the Court that he has not been supplied with the witness statements (or any other prosecution documents) as ordered by the court. This minimum obligation on the accused person triggers the court's duty to ensure the documents are supplied before commencement of the trial. See: Republic vs. Francis Muniu Kariuki [2017] eKLR)

In the instant case, I have perused the lower courts record, at the commencement of the trial on the \$7/09/2023\$ the trial commenced with two witnesses testifying. **PW1 Rashid Kyabagu Ssimbwa** and **PW2 Namaweje Sawuya** testified. The accused only brought up

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the issue of disclosure on the 18th day of October 2023 almost a month after the two key witnesses had already testified.

On the \$18^{th}\$ day of October 2023 when the matter came up for hearing, the accused prayed for disclosure and a chance to talk to the prosecution and the complainant seeking an out of court settlement which the court accepted. Later on the prosecution informed the court that they had indeed disclosed the CCTV report to the accused and he had promised to compensate the complainant within a week. At all material times, the accused who was not represented did not make any objection with regard to this matter.

In fact, the question of disclosure only arose after the applicant had gotten legal representation and after three crucial witnesses had already testified. On page 16 of the record of the lower court, counsel representing the applicant is on record admitting that the applicant applied for disclosure and the disclosure was made to him. From the record of proceeding, it is therefore evident that the disclosure was made to the applicant

On the question of whether the bail cancelled by the learned trial magistrate can be reinstated by the trial magistrate, counsel for the applicant argued that the learned trial magistrate had no legal basis to cancel bail initially granted to the applicant.

In the case of *Swali & Anor Vs Uganda Criminal Misc. Application No.001 of 2016*, it was held that bail once granted can only be lawfully cancelled upon satisfaction of the court that granted it that there has been a breach of the conditions set by it or of the law. That court further went to state that once bail is

granted,

it can only be cancelled for a very grave reason. The rules of natural justice also demand that the accused person be heard before the decision to cancel bail is made.

From the perusal of the record of proceedings, it is true that the applicant was granted a cash bail of Ugx.400, 000/ \$=\$ on the 31st day of August, 2023. The applicant was however, not in position to fulfil the said terms immediately and therefore the matter proceeded for hearing. When the matter came up for hearing on the 4th October 2023, the prosecution made a prayer to have that bail cancelled. This prayer was made in the presence of the applicant. The court indeed granted the prayer sought by the prosecution to have the bail cancelled on the reason that the trial was now in its advances stages. It should be noted that throughout the time of the grant and the cancellation of the bail, the applicant was still in prison.

The reasons for the cancellation of the applicants bail are well set out by the trial magistrate as indicated by the record of proceedings on page 9 and cannot be faulted. Rule 20 of the **Bail Guidelines 2022** provides that bail maybe cancelled for any other reason that the court may deem satisfactory. In this case the court deemed the reasons given by prosecution satisfactory hence cancelling the bail. Accordingly, the application is dismissed. The matter is referred back to the trial court for further management.

I so order.

Judge

4/06/2024

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