

UGANDA / JUDGMENT

Sserunkuuma v Uganda (Miscellaneous Criminal Application 9 of 2019) [2019] UGSC 101 (20 November 2019)

[2019] UGSC 101

COURT

Supreme Court of Uganda

BEFORE

Mwondha, JSC

CASE / FILE NUMBER

Miscellaneous Criminal Application 9 of 2019

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THE REPUBLIC OF UGANDA IN THE SUPREME COURT OF UGANDA AT IAMPALA

(Coram: Mwondha; J. S. C) Single Justice

MISC CRIMINAL APPLTICATION NO. 09 OF 2019

Arising from Ciminal Appeal No 38 of 2019

Also aising from Criminal Appeal N o. ^O1 4 7 of 2 0 1 5(All arising out of Ciminal case N o. 1 ²3 of 2 0 1 3 of the High Court of Uganda
Ciminal of the Anti-Corruption Diuision)**Between**

SSERUNKUUMA EDRISA APPLICANT

And

UGANDA.. ..., RESPONDENT

Before: HON. LN)Y JUSTICE FAITH MWONDHA; JSC**RULIITG OF THE COURT**

This application was brought under Article 126,2 (el of the Constitution of the Republic of Uganda 1995 as amended, Rule 6 (1 & 2a) of the (Supreme Court Rules) Direction 1996.

It was seeking for Order that

- (1) The Applicant Sserunkuuma Adrisa be granted bail pending hearing and determination of the Criminal Appeal No. 37 of 2019 pending in this Court.

The application was supported by an affidavit deposed by the applicant the brief grounds of which were inter alia as follows:-

- (1) The applicant on the 6th day of January, 2013 was charged at the High Court of Uganda in the Anti-Corruption Division with theft of C/S 254 (1) and 261 of the Penal Code Act, Electronic fraud C/S 19(I) of the computer Misuse Act 2011, unauthorised access C/S (2(l) and 20 (l) of the computer Misuse Act 2011, and conspiracy to commit a felony C/S 390 of the Penal Code Act Cap. 120
- (2) That on 27th April 2015 the applicant was convicted of theft C/S 254 of the Penal Code Act Electronic Fraud C/S 19 of the Computer Misuse Act 2011 unauthorised Access C/S 123 and 20(l) of the Computer Misuse Act 2011, and conspiracy to commit a felony C/S 390 of the Penal Code Act Cap 120.
- (3) That the applicant was sentenced to 7 years imprisonment on the Count of theft, 7 years imprisonment on the Count of Electronic Fraud C/S of the computer Misuse Act 2011, 9 years imprisonment on the Count of unauthorised access C/S 390 of the Penal Code, Act Cap 120.
- (4) That the applicant dissatisfied with the judgment and decision of the High Court appealed to Court of Appeal.
- (5) That the applicant applied for bail pending appeal and was granted cash bail bond of 5,000,000/= cash (five Million shillings) Pending hearing and determination of the appeal which the applicant has not recovered.
- (6) That at all material times the applicant has been compliant to the bail terms until the final disposal of the appeal.
- (7) That on the 29th August the appeal was determined and was acquitted of the offences of unauthorised access C/S 12(3) of the Computer Misuse Act 2011 and conspiracy to defraud C/S 390 of the Penal Code Act. The complaint of the electronic fraud C/S 19 (l) of the computer Misuse Act and theft C/S 254 (l) of the Penal Code Act Cap 120 were upheld by the Court of Appeal.
- (8) The applicant being dissatisfied with the judgment and sentences of the Court of Appeal filed an appeal through his lawyers and the Notice of Appeal was filed on 5th September, 2019.
- (9) That the applicant's appeal has merit with a high likelihood of success. (10) That the applicant has a fixed place of abode in Kirokore Local Council Kawempe Division Kampala District.

- (11) That the applicant has substantial sureties and they know their duty being the same sureties who stood for him in the Court of Appeal.
- (12) That the applicant has no other Criminal record apart from the one from which this appeal /application arises.
- (13) That it is first and equitable that the applicant be granted as this Court has a direction to grant.

At the hearing the applicant was represented by Counsel Ambrose Tebyasa, and Ms Sandra Namigadde, while the respondent was represented by Mr. Mugisha Peter State Attorney.

Appellant's submissions

Counsel submitted the application by relying on the case of Arvind Patel v. Uganda Criminal Application No I of 2003 which he argued that it laid down the guidelines which may be applied on such case as this. He also relied on the David Chandi Jamwa v. Uganda Cr. Application No 9 of 2018, Segujja Daniel & Another v. Uganda Misc Application No 5 of 2079. He submitted that this Court had the jurisdiction to grant bail pending appeal to any convicted person who has lodged a criminal appeal to Court under Rule 6 (2) of the Supreme Rules.

".... in any criminal proceedings where notice of appeal has been given in accordance with rules 56 and 57, order that the appellant be released on bail pending the determination of the appeal.

He submitted that anticipated delay in hearing the appeal together with other factors could constitute good grounds for granting bail pending appeal.

He also submitted that there are further circumstances which the Arvind case laid down, the Court can consider when handling a case of this nature. The other circumstance were inter alia

- (1) If the appellant was a list offender,
- (2) The appeal having been admitted and showed that it was not frivolous.
- (3) The case the appellant was convicted of did not involve personal violence.

He submitted further that the co-accused persons like Segujja Danny and Matovu Edgar were released on bail pending appeal and considering his character he was a lit and proper person to be granted bail pending determination of the appeal.

Counsel presented three sureties who had stood surety for the applicant in the Court of Appeal. The particulars of the sureties were recorded. The first one was Haji Semwanga Abdul the father as the applicant and their particulars were on the documents as filed in Court. He holds National Identity Card No. CM 4409 1 11 ZIH and resident of Kirokole Zone. The second surety was Senyonjo Malidi Suleiman a brother in law of the applicant. He holds National Identity Card No. CM 74012104 RTVK and a recommendation letter from Bugoja Local Council.

The third surety was Ms Semwanga Nalurya Maimuna. He holds National Identity Card CF 830911012 ZCL. She is the elder sister of the applicant and resident of Kajjansi. She was ready to deposit a Certificate of Title the 1\ land comprised in Busiro Block 294 P\ot 426 land at Lwamutundwe Counsel prayed that this Court finds the sureties substantial and that the 5,000,000/= which the applicant deposited as surety in the Court of Appeal, and has been refunded to him be retained as such.

Counsel submitted further that the affidavit which was frled in opposition of the application, deponed by onc Joanita T\rmwikirize does not in any way

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deny the averments of the applicant as stated in the affidavit in support of the application.

Counsel argued that the affidavit which was filed in opposition of the application stating that the applicant is likely to abscond since the charges he was convicted of involved sum of 3,150,000,000/ =. That the sentence of 7 to 9 years imprisonment weigh heavily on him so there is high likelihood of abscondment. He submitted that, that was a speculation. That the applicant never abused his bail terms and that the trial Court ordered that all moneys found / confiscated and collected from the convicts be restored to the rightful owners (complainant).

He prayed that Court be pleased to grant the applicant bail pending determination of the appeal.

Respondent's submlssions

Mr. Mugisha opposed the application on the basis that the applicant did not satisfy the requirements of granting him bail. He argued that exceptional circumstances have not been proved and so pray the same be dismissed.

Counsel submitted that, the applicant was convicted of theft of 3,150,000,000/= (three billion one hundred and lifty million shillings. He was convicted of electronic fraud and the sentences of 7 years and 9 years imprisonment were upheld. He argued that exceptional circumstances have tX, not been proved and so prayed that the application be dismissed. Counsel submitted that the applicant was convicted of theft of 3,150,000,000/= and that he was convicted of Electronic Fraud and the sentence of the 7 years and 9 years was upheld.

He submitted that at page 97 Count 2 the sentence of theft of 9 years was maintained and on page 98 on Court 6 which was the electronic fraud the sentence of 7 years was upheld.

That because of the above there is high likelihood of absconding as both sentences are substantial.

Counsel submitted that just complying with terms of bail conditions does not constitute exceptional circumstances to warrant the applicant to be released on bail pending the appeal. He attempted to rely on the case of Umar Vathl Vlshuol case No. 9 allegedly of the Supreme Court of Zambra but could not succeed as it was not signed and certihed and was not paged.

Counsel argued that this was a case involving colossal sum of money and Court can find that the gravity of the substantial sum of money involved in the case, can be a ground for denying bail pending appeal.

On the issue of likelihood for delay to hear the appeal, Counsel argued that it is merely speculative. He argued further that the applicant has not attached any evidence to prove so.

On the reason that the applicant is of good character because he is a first offender, Counsel relied on the case of Kyeyune Mitala Julius v. Uganda SCCR Application I{o. 9 of 2016. He submitted that in the Ruling, the Judge noted that he did not see the relevance of character of the Applicant. Whether he is a first offender or not ..." Counsel prayed that this Court be persuaded by the ruling. . t

On the issue of the applicant having a fixed place of abode, Counsel argued that there was inconsistency between the Applicant affidavit and the L C I Chgirman's letter. Annexure L showed that the applicant was renting while the Chairman stated that the applicant was staying at Serugoti Subzone at Haji Serwanga's home.

. Applicant's rejoinder

On the sentence of 7 and 9 years Counsel maintained that at page 97 Count 2 the convictions were upheld but resented to 5 years each of the 6 appellants.

On page 98 Count 6 which was fraud C/S 19 (1) of the Computer Misuse Act 2011 7 years were upheld.

On the issue of colossal sum of money Counsel submitted that the trial Court at page 31 of the application, the very last paragraph, the trial Judge ordered that in addition, ... I order that all the money which was confiscated from the convicts and admitted as exhibits in Court be handed over to the complainant in compensation for the loss he incurred. He further submitted that the figure per se alleged to have been stolen does not cause any strange circumstances especially in the view of the fact that there was no other specific order for refund of money. Counsel added that the case relied on by Counsel for the respondent Kyeyune Mitala (Supra) is distinguishable from the instant case.

He argued that according to page 2 of that case among other circumstances, the applicant therein had been convicted and conviction upheld by the Court of Appeal and the Court of Appeal had ordered to pay 40% per annum on the sum for which he had been convicted. He argued that 40% of 300 million which he stole caused extreme special circumstances, but those circumstances did not exist in the matter before Court. This is in addition to the fact that it's not binding on this Court its only persuasive.

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On the argument raised by Counsel for the respondent that the delay of hearing the appeal was speculative. Counsel argued that considering the fact that appeals are filed almost everyday, the Court takes judicial notice that there is no guaranteed that the appeal will be heard soon or expeditious.

Concerning the inconsistencies, between annexure K & L. Counsel submitted that the affidavit in support was deposed personally by the applicant and he stated where he had a fixed place of abode. Annexure L was written when the applicant was in prison. But most importantly both documents show that the applicant stays in Kirokole zone. He further submitted that the inconsistency should be disregarded because it's a technicality.

He prayed that the Court may be pleased to grant the bail pending appeal as prayed earlier.

Consideration of Court

This is an application for bail pending determination of the appeal under Article 126 (2) (e) of the Constitution of the Republic of Uganda 1995 as amended, and Rules 6 and 2 (a) of the Supreme Court Rules Directions 1996.

Rule 6 (2a) provides (1) but Court may-

- (1) In any criminal proceedings, where notice of appeal has been given in accordance with rules 56 and 57, order that the applicant be released on bail pending the determination of the appeal.

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I have carefully perused the evidence contained in the affidavit of the applicant in support of the application and the affidavit in opposition of Ms Joan Tirmwikize. I have also considered the submission of both Counsel for and against the application and I found the following:

- (1) There is notice of appeal given in accordance with the provisions of the law.
- (2) That the applicant is of good character having been a first offender and the fact that he did not abuse his bail terms when his appeal was pending determination in the Court of Appeal. In *Arvind Patel v. Uganda* (Supra) Order JSC had this to say "... applicants character is an important consideration in the instant application. The appellant is a first offender..."
- (3) He produced substantial sureties who are alive to their duty.
- (a) The appeal is not frivolous because of the success he had so far had in the Court of Appeal on Counts 3, 4, 5 and partially in Count 2 where the applicant's sentence was reduced to 5 years imprisonment.
- (5) That it is not true that the appellant had 7 and 9 years imprisonment on him that would cause him to abscond. And the record of the Court of the application was clear. Page 98 of the record of the application. The sentences were to run concurrently.

- (6) The evidence on the record particularly of the Applicant in his affidavit showed that he had a fixed place of abode, so the inconsistency was not substantial in my view to form a basis of the denial of bail pending determination of the appeal.
- (7) There is no merit in the argument by Counsel for the respondent that the amount involved in the offences committed was colossal and so Court should regard it and deny bail to a single applicant. According to the record of the application, they were 6 accused / convicted persons and the applicant is No. 1. If this colossal amount was to be attributed to only one person, my view is that it would cause ^a miscarriage of justice. This is more so when the trial Judge clearly ordered that the money confiscated from the convicts be restored to complainant.
- (8) That two of the appellants Segujja Danny and Matovu Edgar applied ^g for bail pending appeal vide Misc. Application No. 05 of 2019 and the application was granted.
- (9) This is an application of the same substantive matter in that it emanated from the same appeal therefore I am of the view that it's only fair that the application be granted.
- (10) In circumstances the factors which weigh in favour of grant of the application like character and being a first offender having substantial sureties, and has permanent place of abode, I have no

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doubt, that the applicant will comply with the bail terms and conditions religiously.

I accordingly grant bail pending determination of the appeal as follows:-

- (a) The applicant to deposit cash bond of shs5,000,000 (shillings five million only)
- (b) The applicant will have 3 sureties as presented to Court and each surety shall bind himself/herself in the sum of Shs50,000,000 (shillings fifty million) Not cash.
- (c) The amount of money shs5,000,000 i.e. five million which the applicant deposited on the granting of bail pending appeal in the Court of Appeal shall serve as security in this Court as it has not been recovered yet. So it is ordered.

The applicant is ordered to report to the Registrar at the end of each month starting with 29/ 11 2019, 9:00 until the appeal is fixed or until further orders of this Court.

Dated at Kampala this 10 day of 11.11.2019

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JUSTICE OF THE SUPREME COURT

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