

UGANDA / JUDGMENT

Swali & Anor v Uganda (Miscellaneous Criminal Application No. 0001 of 2016) [2017] UGHCCRD 37 (23 March 2017)

[2017] UGHCCRD 37

COURT

HC: Criminal Division (Uganda)

BEFORE

Stephen Mubiru, J

CASE / FILE NUMBER

Miscellaneous Criminal Application No. 0001 of
2016

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT ARUA

MISCELLANEOUS CRIMINAL APPLICATION No. 0001 OF 2016

(Arising out of Criminal Case No. 1377 of 2014)

1. SWALI AYO ALI }
2. AGOLE RATIB } APPLICANTS

VERSUS

UGANDA RESPONDENT

Before: Hon Justice Stephen Mubiru.

RULING

This is an application by notice of motion under Article 23 (6) (a) and (c) of *The* *Constitution of the Republic of Uganda*, sections 14 and 15 (4) of the *Trial on Indictments Act Cap.23*, section 98 of *The civil Procedure Act* and sections 33 of *The Judicature Act*, for reinstatement of bail. The applicants are indicted with one count of Murder c/s 188 and 189 of The Penal Code Act. It is alleged that on 2nd May 2014 at Taparango village in Yumbe District, the applicants together with others at large, murdered a one Taban Yasin. They were charged on 19th June 2014. They were committed to the High Court for trial on 29th October 2014. Before their case was fixed for trial, they applied for and were released on bail pending trial by the High Court on 22nd December 2015 on condition, among others, that they were to report to the Grade One Magistrate at least once a month as directed from time to time by that court. They kept on reporting to the court

religiously in accordance with the bail terms.

Their case first came up for trial before the High Court on 3rd October 2016 and both of them were not in court. The case was adjourned to 13th October 2016 at 10.00 am. On that day there were four prosecution witnesses in court but the applicants were absent. The court issued a warrant of arrest and adjourned the case to 19th October 2016 at 12.00 noon. On that day the applicants were not in court and since they had not been arrested yet, the case was adjourned to the next convenient session. Their bail was cancelled in the meantime.

In the affidavit supporting their application, the applicants in paragraphs 7 and 8 depose that when the case was fixed for hearing on 10th October 2016 and the court directed that they be served with criminal summons, they were nevertheless not served and were therefore not aware of that fixture until their co-accused who lives in Arua alerted them. They endeavoured to turn up but arrived late after the case had been adjourned to the next session and their bail cancelled without being given an opportunity to explain their late coming, hence this application by which they seek the reinstatement of their bail pending their trial.

In an affidavit in reply sworn by the learned State Attorney Emmanuel Pirimba on 13th March 2017, he states that the applicants reported to court only after learning that a warrant of arrest had been issued against them for failure to turn up in court, although he does not specify the date. The applicants, their advocate and himself met in the chambers of the trial Judge who cautioned them to appear on the next date. On the day their bail was cancelled, the applicants arrived thirty minutes late after the file had been called at 9.30 am and adjourned to the next convenient session. They had deliberately ignored the criminal summons and their being admonished by the trial Judge to turn up on the following day. Since they are indicted with a grave offence, their bail should not be reinstituted as they are now a flight risk.

At the hearing of the application, the applicants' counsel Mr. Buga Muhammed argued that the manner in which the applicant's bail was cancelled was irregular and it ought to be reinstated since they had honoured all the bail conditions. The applicants had not been served with criminal summons but nevertheless had endeavoured to turn up in court which conduct is not that of a person who is a flight risk. He prayed that the bail be reinstated on the same terms on which it had originally been granted.

In reply, the learned State Attorney Ms. Gertrude Nyipir argued that the appellant's absentia on the previous occasions had caused the state to incur unnecessary expenses on witness transport refund which should be avoided this time round by keeping the applicants in custody until their trial. The applicants do not respect court orders and therefore bail should not be reinstated.

It is trite law 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 (see *Uganda v. Lawrence Luzinda [1986] H. C. B 33*). Once bail is granted it can only be cancelled for a very grave reason. It should never be cancelled unless there is breach of one of the terms under which it was granted (see *Uganda v. Leonadi Sendawula and others [1971] HCB 292); Florence Nansikombi v. Uganda [1977] H. C. B 107*).

In the latter decision, 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. This would mean that there should be evidence adduced in court to prove the ground on basis of which cancellation of bail is sought. The rules of natural justice would demand as well that the accused be heard before the decision to cancel bail is made.

I have perused the record of proceedings leading to the cancellation of the applicants' bail and found that my learned brother Judge did not furnish any reason for cancellation of the applicant's bail. It is only to be deduced from the fact that they were not in court when the case was called for hearing on 19th October 2016 at 12.00 noon, on which day the affidavit in reply reveals they arrived half an hour late. They were never given an opportunity to explain their late arrival. There is no evidence on record to prove that they were served with criminal summons or that they met the trial judge in Chambers and cautioned in the circumstances stated in the affidavit in reply. Therefore it has not been proved that they failed to honour any of the conditions of their bail. They will therefore be given the benefit of the doubt that they turned up on that day on their own volition, which conduct is not consistent with the feared propensity to jump bail.

In the circumstances I find merit in the application and hereby reinstate their bail except that I now impose a variation to one of the terms as follows; -

1. The applicants are to report to the Assistant Registrar of this Court on the first Tuesday of every Month until the commencement of their trial or further orders of the court and to the Officer in Charge of Criminal Investigations at Yumbe Police Station on the last working day of every month until the commencement of his trial or further orders of the court.

Dated at Arua this 23rd day of March, 2017.

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Stephen Mubiru

Judge.

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