

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL DIVISION
CRIMINAL MISC APPLICATION NO.0409 OF 2023
ARISING FROM BUGANDA ROAD CHIEF MAGISTRATE COURT
CRIMINAL CASE NO.016 OF 2023
WANDEGEYA POLICE CRB NO.778 OF 2021.
KAAYA VICENT **APPLICANT**
VERSUS
UGANDA **RESPONDENT**
BEFORE HON: JUSTICE ISAAC MUWATA
RULING

The applicant filed this application seeking to be released on bail pending trial before the Chief Magistrates court at Buganda Road.

The specific grounds supporting the application are set out in the application and they are also expounded in the written submissions filed by the applicant which I have considered. They are mainly that he the applicant was initially charged with the offence of conspiracy to commit a felony and subsequently released on bail pending his trial. That during this period he neither jumped bail nor absconded but continued reporting to court.

That after some time the charges against him were amended and his bail was subsequently cancelled by the Chief Magistrate. He applied again to the Chief Magistrate but the same was denied.

In reply, the prosecution made no objection to the application but prayed that stringent terms be imposed on the applicant.

Consideration

Article 23(6)(a) of the Constitution provides that a person arrested in respect of a criminal offence has a right to apply for bail and the court may grant such a person bail on such conditions it considers reasonable. The import of this provision is that the grant of bail is an exercise of discretion and is not automatic.

The applicant in this case was denied bail in the trial court and therefore the provisions of section 75(4) of the Magistrates Courts Act become applicable. The section provides that;

The High Court may, in any case where an accused person is appearing before a magistrate's court—

(a)where the case is not one mentioned in subsection (2), direct that any person to whom bail has been refused by the magistrate's court be released on bail or that the amount required for any bail bond be reduced; and

(b)where the case is one mentioned in subsection (2), direct that the accused person be released on bail.

The applicant contends that it was unfair for the learned Chief Magistrate to cancel his initial bail for the mere fact that the charges against him had been amended. He contends that this was not justified considering that he had not breached any of the terms of the bail he was initially granted.

Bail may be cancelled only where there is a compelling reason or the accused has breached the terms and conditions of his release. Was the cancellation upon compelling reason or a breach of the terms and conditions?

The Chief Magistrate ruled that the applicant may abscond if released on bail again. The reason according to him was that the case was part heard with one prosecution witness, secondly that the sureties were not substantial and lastly that the offence involves colossal sums of money.

The fact that the matter was part heard with one prosecution witness already testifying, does not take away the presumption of innocence. An accused person continues to enjoy the presumption of innocence until he or she is proven guilty or pleads guilty. Other than stating that there was incriminating evidence against the applicant, no evidence was adduced by the prosecution to show that the applicant was at flight risk or likely to abscond if released on bail again.

The submission by the applicant that he has a known fixed place of abode at Luwunga/Bugwanya L.C.1, Luwunga Parish, Kakiri Sub-County Wakiso

District and a family are convincing that he is not likely to abscond. In any case the record shows that he attended court when he was on bond and never breached any of the terms and conditions.

Furthermore, it is provided for under **Rule 13 (1) (k) of the Constitution (Bail Guidelines for Courts of Judicature (Practice Directions 2022)**, that in considering an application for bail, the court may consider whether the applicant has on a previous occasion when released on bail complied with the conditions of his bail. In this particular case, the applicant adduced evidence that he had previously complied with the conditions of his bail.

The objective of bail therefore is to give an accused liberty while also ensuring that he attends his trial. The evidence placed before the court shows that the applicant faithfully attended court during the time he was on bond. There was no evidence that suggested that he was likely to abscond from bail.

Similarly, an amendment of a charge sheet does not necessarily cancel bail of an accused provided he or she has not breached the terms and conditions of his bail and provided that the offence with which he or she is charged with is within the jurisdiction of that court to grant bail. The case would be different if the amended charges were capital in nature.

Bail once granted therefore can only be cancelled upon satisfaction of the court that there has been a breach of the conditions set by it or of law. It can only be cancelled for a very grave reason. **See: Uganda Vs Lawrence Luzinda [1986] H.C.B 33).**

In light of the above findings, I shall reinstate the bail on the same terms and conditions earlier issued by the trial court.

I so order.

JUDGE

23/01/2024