

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CRIMINAL APPLICATION NO. 01 OF 2023
ARISING OUT OF CRIMINAL APPEAL NO. 026 OF 2019

MELLAN MARERE: ===== APPELLANT

VERSUS

UGANDA : ===== RESPONDENT

BEFORE HONORABLE JUSTICE MIKE J. CHIBITA; JSC.

RULING

The Applicant applied for bail pending determination of her appeal. The application was lodged by Notice of Motion under Rules 6 (2) (a), 42 and 43 of the Judicature (Court of Appeal Rules) Directions. The grounds of the application as contained in the Notice of Motion and are that:

- a) The Applicant is a first offender
- b) The appeal that has been filed by the applicant is not frivolous and has a high probability of success.
- c) There is a high possibility of substantial delay in the determination



d) The Applicant's state of health requires specialized medical attention and a balanced nutritional diet which she is unable to access while serving her custodial sentence in prison.

e) The Applicant has complied with the bail terms and conditions granted by the High Court.

f) It is just and fair that the Applicant be granted bail pending her appeal.

The application was filed in the court registry on 12th April 2017 and is supported by the affidavit of the Applicant commissioned on 17th March, 2017. In the affidavit in support of the application, the Applicant deposed that she is a female adult Ugandan of sound mind aged 77 years, former District Councilor representing Rugyeyo Sub County and a recipient of the Golden Jubilee Medal, Kanungu District.

On 7th 06, 2017, she was convicted of murder contrary to Section 188 and 189 of the Penal Code Act and sentenced to 29 years and 10 months' imprisonment. She is currently serving the sentence at Luzira Prisons. She filed an appeal against conviction and sentence in the Court of Appeal which reduced sentence to 18 years.

She was previously released on bail before her trial in the High Court and fulfilled all the conditions imposed on her until her conviction. She is of advanced age and suffers from asthmatic attacks, HIV WHO stage II, non-pitting oedema of the legs and her legs have been amputated. The significant medical findings are that the vascular system in which she has enlarged heart, systolic murmurs, increased jugular vein pressure and galloping rhythm.

That these require specialized medical attention and a balanced nutrition diet which she is unable to access while serving her custodial sentence in prison.

She deposed that she has a constitutional right to apply for bail and it may take long before her appeal is heard and determined considering the heavy workload of the court. Apart from the charge for which she was convicted, she has no previous criminal record or pending charges against her in any other court of law. In the main she repeats the grounds in the Notice of Motion that she has a fixed place of abode at Burora Village, Katungu Parish, Rugyeyo Sub County, Kanungu District within the jurisdiction of this court and is willing to abide by all the conditions that may be imposed upon her by this honourable court and will not abscond. Furthermore, she has substantial sureties who are resident within the jurisdiction of this honourable court who are willing to and will stand for her to be produced at the hearing of the application with the leave of court.

The affidavit in reply is that of Nabaasa Caroline PADPP working with the office of the DPP. She denied the contents of the Applicant's affidavit and deposed that this honorable court has already heard and dismissed a similar application by the applicant which was based on the same averments in Misc. Application No.04 of 2021. She deposed that paragraphs 7,8 and 9 of the applicant's affidavit were superfluous since the main appeal has already been argued and is pending judgment. That there is no legal provision conferring a right to the applicant to apply for bail pending judgment and thus the application is bad in law. She deponed that paragraph 18 of the applicant's affidavit is

