

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPLICATION NO.492 OF 2001**

CHARLES KAMUNYI APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

CHARLES KAMUNVI (the applicant) has come to this court pursuant to the provisions of Section 123 and S.379 (4) of the Criminal Procedure Code for bail pending the hearing and disposal of his intended appeal to the Court Appeal against the dismissal of the first appeal to this court, being High Court Criminal Appeal No.1356 of 2000 by Hon. Mr. Justice S. O. Oguk on the 22nd June, 2001. In his brief judgement, the learned Judge had this to say:

“There is no dispute that the officers of Interpol Uganda communicated with their Kenya counterparts in connecti on with the intended arrest of the appellant who was believed to be in Kenya and was required in Uganda to face Criminal charges. The Kenyan Police Officers duly traced the appellant and arrested him. Thereafter the Attorney General was requested by Ugan da authority to have him extradited to Uganda to stand trial on the basis of the charge that was sent to Kenya. That charge sheet was laid before the Kenyan Court and the appellant was produced before the Court. He opposed the extradition proceedings on the grounds that the offences for which he was allegedly sought in Uganda were of political nature. Evidence was then adduced by the prosecution and the defence. The learned trial magistrate, having considered the evidence before her, was not persuaded t hat there was any political nature in the charges facing the appellant in Uganda. She rejected the defence and upheld the prosecution case. The appellant then came to this court”.

Mr. Justice Oguk then reviewed the relevant law applicable and agreed with the learned trial magistrate’s order, extraditing the applicant to Uganda to stand trial and dismissed his appeal.

I have perused the extradition documents and do find a charge sheet containing the proposed charges which the applicant will face in Uganda upon his extradition. In counts 1, 2, and 3 he will be charged with Fraudulent false accounting contrary to Section 305(b) of the Penal Code Act of Uganda and Counts 4, 5 and 6 he will be charged with Forgery Contrary to Section 327 of the Penal Code Act and in counts 7, 8, 9 and 10 he will be charged with Obtaining Money by False pretences contrary to Section 289 of the Penal Code of Uganda. These are Extradition Crimes as provided in a schedule to the Extradition (contiguous and Foreign Countries) Act Chapter 76 Laws of Kenya.

Upon my examination of the proceedings in the lower court I find that the learned Principal Magistrate invoked Part III of the EXTRADITION ACT Cap 76 dealing with RECIPROCAL BACKING OF WARRANTS and applied the provisions of Section 12 thereof. The application of this part III of the Extradition Act Cap 76 to Tanzania and Uganda is through The EXTRADITION (APPLICATION OF PART III) ORDER vide L.N.95/1966 as made pursuant to Section II (1) of the said Extradition Act Cap 76. The order of extradition issued by the learned Principal Magistrate is therefore backed by legal provisions and is valid.

The applicant now seeks to be admitted to bail pending the hearing and determination of his intended appeal to the Court of Appeal. Provision for second appeals to the Court of Appeal is given in Section 361(1) of the criminal procedure Code, where it is expressly provided that the Court of Appeal shall not hear an appeal on a matter of fact. Quite clearly therefore the applicant must demonstrate that, on points of law only, he has overwhelming chances of succeeding in the Court of Appeal. In my view he has failed

to do so.

This application for bail pending appeal is consequently dismissed.

It is so ordered.

Dated and delivered this 26th July, 2001.

A.G.A. ETYANG'

JUDGE

Delivered in the presence of the applicant and Miss Nyamosi for the Republic.

A.G.A. ETYANG'

JUDGE

26.7.2001