

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**HCT-CR-MISCELLANEOUS APPLICATION NO. 022 OF 2022**  
**(ARISING FROM CR-CS-AA-015 OF 2022)**  
**KIHIKA COHEN=====APPLICANT**  
**VERSUS**  
**UGANDA=====RESPONDENT**

**BEFORE HON. JUSTICE VINCENT WAGONA**  
**RULING**

This is an application for bail pending trial brought by way of Notice of Motion under Article 23 (6) (a), 28 (3) (a) and 139 (1) of the Constitution, Sections 14 (1) and 15 (4) of the Trial on Indictments Act Cap. 23, and Rules 2 and 3 of the Judicature (Criminal Procedure) (Applications) Rules SI 13-8).

The grounds of the application are stated in the Notice of Motion and supported by affidavit of the applicant and the written submissions of Counsel Cosma A. Kateeba of KRK Advocates, Counsel for the Applicant and are that:

1. The applicant aged 30 years was arrested on 6.12.2020 and charged with manslaughter c/ss 187 and 190 of the Penal Code Act together with others and granted bail and complied with the bail conditions. The charges were amended to murder on 8.2.2022 and the applicant was remanded into prison.
2. The applicant was committed for trial to the High Court on 10.3.2022, but he is presumed to be innocent until proven or pleads guilty and has a constitutional right to apply for bail.

3. The applicant will not abscond when granted bail; he has a fixed place of abode at Nyamigongo LC1, Kirere Parish, Busoro Sub-County in Kabarole District; and has presented substantial sureties.

It was submitted for the Applicant citing **Uganda versus Rtd. Col. Kiiza Besigye, Constitutional Reference No. 20 of 2008**, applied in **SP Baguma versus Uganda, Miscellaneous Application No. 231 of 2016**, that the Constitution gives an accused a right to apply for bail and gives Court the discretion to grant bail; that proof of exceptional circumstances is no longer mandatory. That court considers factors like nature and gravity of offence, stage of proceedings, likelihood to abscond, risk of interference with witnesses (**Mwesigwa Dan versus Uganda, High Court Miscellaneous Application No. 002 of 2022**). It was submitted that in this case there is no possibility of interference with witnesses as inquiries are complete and the applicant is already committed to the High Court for trial. That the Applicant had observed bail conditions prior to the charges being amended from manslaughter to murder.

In response, the State, represented by Arinaitwe Robert (State Attorney), opposed the application through written submissions. It was contended that the sureties presented were not substantial, because they did not adduce evidence of their financial capacity to forfeit their bonds when required and that their employment or occupation status was not established. It was further contended that the sureties were not sufficiently introduced to court because the LC Chairperson's introductory letter was not witnessed by at least another LC Committee member.

#### **CONSIDERATION BY COURT**

Article 23(6) of the Constitution provides as follows:



*Where a person is arrested in respect of a criminal offence—*

- (a) the person is entitled to apply to the court to be released on bail, and the court may grant that person bail on such conditions as the court considers reasonable;*
- (b) .....;*
- (c) in the case of an offence triable only by the High Court, if that person has been remanded in custody for one hundred and eighty days before the case is committed to the High Court, that person shall be released on bail on such conditions as the court considers reasonable.*

Section 14 (1) of the Trial on Indictments Act that provides for release on bail states as follows: "The High Court may at any stage in the proceedings release the accused person on bail, that is to say, on taking from him or her a recognisance consisting of a bond, with or without sureties, for such an amount as is reasonable in the circumstances of the case, to appear before the court on such a date and at such a time as is named in the bond."

Section 15 of the Trial on Indictments Act provides for refusal to grant bail as follows:

- (1) Notwithstanding section 14, the court may refuse to grant bail to a person accused of an offence specified in subsection (2) if he or she does not prove to the satisfaction of the court—*
  - (a) that exceptional circumstances exist justifying his or her release on bail; and*
  - (b) that he or she will not abscond when released on bail.*
- (2) An offence referred to in subsection (1) is—*
  - (a) an offence triable only by the High Court*
  - (b) ..... .*

(3) In this section, "exceptional circumstances" means any of the following—

(a) grave illness certified by a medical officer of the prison or other institution or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody;

(b) a certificate of no objection signed by the Director of Public Prosecutions; or

(c) the infancy or advanced age of the accused.

(4) In considering whether or not the accused is likely to abscond, the court may take into account the following factors—

(a) whether the accused has a fixed abode within the jurisdiction of the court or is ordinarily resident outside Uganda;

(b) whether the accused has sound securities within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail;

(c) whether the accused has on a previous occasion when released on bail failed to comply with the conditions of his or her bail; and

(d) whether there are other charges pending against the accused.

The accused is entitled to apply to the court to be released on bail, and the court has the discretion to grant or refuse bail.

In *Col (Rtd) Dr. Kizza Besigye V. Uganda, High Court Kampala Criminal Application No. 83 of 2016* Hon. Justice Masalu Musene held that: ".....the court is given or left with the discretion to grant or refuse bail. It must always be borne in mind that where any legislation confers upon court the discretion to do or refrain from doing, grant or refuse to grant a relief sought, such discretion must be exercised without any malice, ill will, ulterior motives or

regard to external influence or circumstances. In exercising that discretion, the court must be satisfied that the provision of the law have been complied with".

In *Tumwekwase Owen v. Uganda, Mbarara HCT-05-CR-MA 57/2019* Hon Justice Ssekaana Musa stated that: "According to Article 23 (6) (a) and 28 (3) of the Constitution of the Republic of Uganda, persons accused of criminal offences have a right to apply for bail. However, the grant of bail is discretionary to the court (see *Uganda Vs Kiiza Besigye; Const. Ref No. 20 of 2005*)."

In the same case, the Judge stated that: "However the applicant is charged with a very grave offence in respect of which the law stipulates that in order to be released on bail, the applicant must prove to the satisfaction of court an exceptional circumstance (see *section 15(3) of the Trial on Indictments Act, Florence Byabazaire vs Uganda High Court Miscellaneous Application Number 284 of 2006*. The applicant has not proved any exceptional circumstance in this application. This court, of course, has in the exercise of its overall jurisdiction, powers to grant bail, even in absence of an exceptional circumstance being proved. Court does so through the judicial exercise of its discretion. The test this court has set is that: "The burden is upon the applicant to satisfy court by putting forth before court a set of facts, beyond the ordinary considerations for bail, upon which the court can act, in the exercise of its discretion, to admit the applicant to bail"(See: *High Court of Uganda at Gulu Miscellaneous Application Number 0037 of 2008; Bongomin Richard Akal vs Uganda, unreported*)".

In this case, the court considers that the court has the discretion to grant bail but remains alive to the gravity of the offence of murder with which the applicant is charged and already committed for trial to the High Court.

There is always a concern as to whether the applicant if granted bail, will return to face trial. In *Aliobe Joseph & Ors v. Uganda, Miscellaneous Criminal Application Nos. 0015, 0016, and 0017 of 2016* Hon. Justice Stephen Mubiru stated that: "*In Hurnam v State of Mauritius [2006] 1 WLR 857, PC, it was held that: A person charged with a serious offence, facing a severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drugs cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail, but they do not do so of themselves, without more. They are factors relevant to the judgment whether, in all the circumstances, it is necessary to deprive the applicant of his liberty. Whether or not that is the conclusion reached, clear and explicit reasons should be given.*"

Regarding whether the accused will stand their trial if released on bail, in *Obey Christopher & Ors. ACD Koloto MISC APPLIC-NO's. 045, 046, and 047/2015*, Hon. Justice Margaret Tibulya stated that: "*This is a function of a number of factors which include the gravity of the offence(s), the likely penalty in the event of conviction, whether or not the applicants have known addresses and tangible interests within the court's jurisdiction, and the quality of sureties they have furnished.*"

In this case, the evidence is that the accused person was previously granted bail when he was originally charged with manslaughter and he complied with the conditions of his bail. It is not disputed that he has a fixed place of abode. The sureties presented are substantial in my view and the prosecution had time to verify them.

On the basis of the evidence put forward, this court is satisfied that this is a case where this court should exercise its discretion to grant bail to the applicant. Bail is granted on the following conditions:

1. The Applicant is to execute and pay a cash bond of **UGX 4,000,000/=** (Four Million Shillings Only).
2. Each of the sureties will execute a non cash bond of **UGX 20,000,000/=** (Twenty Million Shillings only).
3. The Applicant is to report to the Assistant Registrar of this Court and to the Officer in Charge of Criminal Investigations at Fort-portal Police Station on the last Tuesday of every month starting in November 2022 until further Orders of this Court.

**Dated at High Court Fort portal this 23rd day of November 2022**

  
Vincent Wagona

**High Court Judge**