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The Republic of Uganda

In the High Court of Uganda at Soroti

Miscellaneous Application No. 0065 of 2023

(Arising from Session Case No 009/2024)

(Arising from Katakwi Criminal Case No. 0006/2023, Katakwi CRB No. 053/2023)

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Otim Isaac Applicant

Versus

Uganda Respondent

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Before: Hon. Justice Dr Henry Peter Adonyo

Ruling on Bail:

1. Introduction.

This is an application by way of Notice of motion brought under Article 23 (6)(a) of the Constitution of Uganda and sections 14(1) & 15 (1) (a), (b) & 15 (3) (a) & (c) of the Trial on Indictments Act and for orders that the Applicant/accused now on remand at Soroti Government Prison be released on bail pending his trial upon such conditions as this honourable shall deem fit.

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2. Grounds.

The grounds of this application as set out in the application and supporting affidavit sworn by the applicant are that the applicant was arrested on the 29th of January 2023 and charged with the offence of aggravated human trafficking c/s 4 of the Prevention of Trafficking in Persons Act 2018 and has been committed

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5 for trial in the High Court of Uganda at Soroti and is presently held at the Soroti Government Prison.

That the applicant has a fixed place of abode at Ogoria village, Okocho parish, Okulonyo Sub-county in Katakwi district.

That the applicant has substantial sureties within the jurisdiction of this court
10 who will ensure that the Applicant will comply with all the bail conditions and who will further ensure that the applicant appears in court for trial on all days when the case is called for hearing. That the applicant shall not abscond when released on bail.

The respondent objected this application in an affidavit in reply sworn by State
15 Attorney Lunyolo Stella Maries on the grounds that the applicant is charged with the offence of aggravated trafficking which attracts a maximum penalty of life imprisonment upon conviction thus the applicant is most likely to abscond bail in fear of the severe sentence.

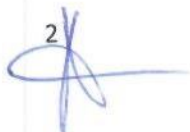
That the prosecution is ready with its witnesses to proceed any time if this case
20 is scheduled for hearing and the application is intended to delay the hearing of the case.

That although the applicant has a constitutional right to apply for bail, the right to grant bail remains a preserve of this court.

That the applicant is likely to interfere with prosecution witnesses if released on
25 bail given that the witnesses are in the locality of the accused's area, the release of the applicant will not only intimidate the witnesses but also compromise the said witnesses which will gravely affect the prosecution's case.

That the applicant's sureties are not substantial since they have not presented their occupation in order for court to determine their social position.

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5 That no documentary proof such as land title, rent payments have been availed to prove that the applicant and his sureties have a fixed place of abode within the jurisdiction of this court.

3. Representation.

The applicant was represented by M/s Menya & Co. Advocates and the
10 respondent by the Office of the DPP Soroti.

This application proceeded by way of written submissions and the same have been considered in its determination.

4. Determination.

The law relating to bail is well settled. In *Uganda (DPP) Vs. Col (RTD) Dr. Kiiza*
15 *Besigye, Constitution Reference No. 20 of 2005* the Constitutional Court held that an accused person has the right to apply to court to be released on bail and a court has the discretion as to whether to grant bail or not under Article 23 (6) (a) of the Constitution of Uganda, 1995.

Article 23 (6) (a) of the Constitution of Uganda, 1995 (As Amended) provides
20 thus;

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;

Capital offences such as aggravated human trafficking this instance are bailable,
25 however, whether the court is inclined to exercise the discretion to grant or not is a matter dependent on the circumstances of each case.

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5 For bail applications before the High Court, Section 14(1) of the Trial on Indictment Act applies as it also amplifies Article 23(6)(a) of the Constitution above, thus;

10 (1) 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.

The High Court and any other court for that matter while considering any bail application is urged to take into account The Constitution (Bail Guidelines for
15 Courts of Judicature) (Practice) Directions, 2022.

Under paragraph 5 of The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 is provided the general principles applicable in the consideration of a bail application thus;

20 The court shall, in considering a bail application, be guided by the following principles as enshrined in the Constitution—

- (a) the right of an applicant to be presumed innocent as provided for in article 28(3)(a) of the Constitution;
- (b) the applicant's right to liberty as provided for in article 23 of the Constitution;
- (c) the applicant's obligation to attend trial;
- 25 (d) the discretion of court to grant bail on such terms and conditions as the court considers reasonable; and
- (e) the need to balance the rights of the applicant and the interests of justice.

5 Further, under Paragraph 12 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions there is provided for the contents of a bail application thus;

An application for bail shall contain the particulars of the applicant, accompanied by—

10 (a) a copy of the applicant's national identity card, or passport or aliens identification card, or employment card, or student identity card;

(b) an introduction letter from the Local Council 1 chairperson of the area where the applicant resides;

(c) where applicable, asylum seeker or refugee registration documents issued by
15 the Office of the Prime Minister; and

(d) expounded grounds for the application

In addition, Section 15(1) of the Trial on Indictment Act provides that;

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
20 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.

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
25 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

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

However, these special circumstances have been found non-mandatory.

Section 15(4) provides that;

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

- 10 (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 sureties 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
- 15 comply with the conditions of his or her bail; and
- (d) whether there are other charges pending against the accused.

Having considered the position of the law as above, I will now turn to consider the merit or not of this application, taking into account the law and the facts as presented.

- 20 a) Fixed place of abode:

The applicant under paragraph 2 of his affidavit stated that he is a resident of Ogoria village, Okocho parish, Okulonyo Sub-county in Katakwi district. Under paragraph 9 he states that this is his fixed place of abode.

- Annexure 'A' to the application is a copy of an introduction letter dated 2nd
- 25 October 2023 from the Lc1 Chairperson Ogoria village indicating that the applicant is a true and permanent resident of his area. That the applicant has been a hardworking student of Okocho Primary School.

5 The applicant did not attach a copy of his national ID or any form of identification. He stated under paragraph 3 of his affidavit that before he was arrested he had not obtained a national Identity card and because of incarceration he has not been able to present his school identification card.

10 The essence of a fixed place of abode is traceability of an accused in the event of abscondment or whenever necessary. Section 15(4) (a) of the Trial on Indictment Act provides that in considering whether an accused is likely to abscond court may take into consideration whether the applicant has a fixed place of abode within the jurisdiction of the court. This is amplified by paragraph 13(k) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions. While
15 the Law does not define the phrase 'fixed place of abode' what is important is that the fixed place of abode must be within the jurisdiction of the court considering the bail application. Where the applicant fails to prove this under section 15(1) of the TIA the court may deny him bail.

On the basis of the evidence put forward I find that the applicant has proved his
20 fixed place of abode. I note that the applicant has not attached a copy of any form of identification but I find that the letter by the LC1 Ogoria village is sufficient to prove fixed place of abode.

b) Substantial sureties:

The applicant under paragraph 7 of his affidavit in support states that he has two
25 sureties who include Ikamerit Deborah his aunt aged 50 years and Amanu Anna Leya his aunt aged 39 both resident of Ogoria village, Okocho parish, Okulonyo Sub-county in Katakwi district.

Annexure 'B1' is a copy of Ikamerit's national identity card and letter of introduction. The letter of introduction from the LC1 Ogoria village dated 3rd

5 October 2023 indicates that she is a true and permanent resident of his area. Her national ID CF3043100Z2TG indicates that she is 50 years old and resident of Dokomer village, western ward, Katakwi Town Council, Usuk county in Katakwi district.

10 Annexure 'B2' is a copy of Amanu's national identity card and letter of introduction. The letter of introduction from the LC1 Ogoria village dated 2nd of October 2023 indicates that she is a true and permanent resident of his area. The copy of her national ID CF84043102M18A indicates she is 39 years old and a resident of Ajeluk village, western ward, Katakwi Town Council, Usuk in Katakwi district.

15 Counsel submitted that she explained to the sureties their roles and duties in their local language Ateso which they understood of failure to ensure that the accused person attends court and they all seem to have understood their obligations. He prayed that this court finds them substantial.

I also noted that the introduction letters of the sureties and their national IDs
20 indicate varying residencies however the difference within the two documents does not negate the fact of the sureties coming from Ogoria as indicated and proven by their LC letters as registration for National identity cards can be done either from where one comes from or where one is working. Having presented an introduction letter from the local council 1 chairperson of the area where she
25 is ordinarily resident, the deviation in the details is not fatal to this application.

Paragraph 15 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions provides for determinants on the suitability of a surety thus;

(1) When considering the suitability of a surety, the court shall take into account the following factors—

- 5 (a) the age of the surety;
- (b) work and residence address of the surety;
- (c) character and antecedents of the surety;
- (d) relationship to the accused person; and
- (e) any other factor as the court may deem fit.
- 10 (2) Subject to sub-paragraph (1) the proposed surety shall provide documentary proof including—
- (a) a copy of his or her national identity card, passport or aliens' identification card;
- (b) an introduction letter from the Local Council 1 Chairperson of the area where the surety is ordinarily resident; or
- 15 (c) asylum seeker or refugee registration documents issued by the Office of the Prime Minister.

From the facts as presented, I do find that the sureties substantial their having proved their identities, their connection to the applicant and their having fixed place of abode within the jurisdiction of this Honourable Court.

- 20 I have also considered the age of these sureties and the fact that they are related to the applicant which facts certainly give them controlling ability over the applicant and as such they are found capable of ensuring that the applicant attends court whenever called upon.

- Article 28(3)(a) of the Constitution provides that all persons charged with criminal
- 25 offences are presumed innocent till proven guilty. Bail is thus meant to safeguard the applicant's right to liberty because he is presumed innocent till proven otherwise.

5 The State Attorney in her affidavit in reply and submissions raised concerns that the applicant will interfere with witnesses when granted bail.

While this a serious allegation that could lead to denial of bail once proven, in this instance, no evidence of the said threat has been adduced and court cannot base a decision against an applicant minus any affidavit evidence supporting such a
10 serious allegation as the refusal to grant bail should not be based on mere allegations but such grounds must be substantiated as was held in the case of *Uganda v Kiiza Besigye (Constitutional Reference No. 20 of 2005) [2006] UGCA 42*.

It must, however, be borne in mind that even where a court grants an applicant bail, the court still reserves the power to cancel any such bail should an applicant
15 be found to have threatened any witnesses or abuse his bail in any way.

5. Conclusion.

On the basis of the above, I am satisfied that this is a case where I should exercise my discretion and grant bail to the applicant pending his trial while taking into account the seriousness of the offence which the accused has been charged with.

20 Bail is accordingly granted on the following conditions;

- 1) The applicant to bring to court the original letters of introduction for his sureties to be put on record.
- 2) The applicant is to deposit a Cash bond of Shs. 2,000,000/-refundable upon the completion of his case or as otherwise directed by this Honourable
25 Court.
- 3) Each of the Sureties for the applicant is bound in the sum of Shs. 10,000,000/- not cash.
- 4) The applicant and each of his sureties are to provide a recent photograph, own registered telephone numbers and copies national IDs to the Registrar

5 of this court and to the Chief Resident State Attorney, Soroti for filing and for record purposes.

5) Upon the Applicant fulfilling each and all of the above conditions, the applicant shall be released on bail but shall be required to report to the Registrar of the Court once a month on each first Monday of the month beginning with the 06/05/2024 until as otherwise directed by this Honourable Court.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

16th April 2024