

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**ANTICORRUPTION DIVISION HOLDEN AT KOLOLO**  
**HCT-AC-CM-0050-2020**

OPIYO NICHOLAS ..... APPLICANT

VERSUS

UGANDA

(DPP).....RESPONDENT

**Before:** Hon Justice Jane Okuo Kajuga

**RULING**

This is an application for bail. The applicant is charged with one count of Money Laundering c/s 3 (c), 116 and 136 (1) (a) of the Anti-Money laundering Act 2013, as amended. It is alleged that on the 8<sup>th</sup> day of October 2020 at ABSA Bank Garden City branch in Kampala District, through A/C No. 6004078045 in the names of Chapter Four Uganda, he acquired USD 340,000 (Three hundred and forty thousand) knowing at the time of receipt that the said funds were proceeds of crime.

From the records available, the applicant first appeared before the Chief Magistrates Court of Nakawa on 24<sup>th</sup> December 2020 and was remanded while his file was referred to the Anti-Corruption Court which is vested with the jurisdiction in cases of money laundering. On the 28<sup>th</sup> of December 2020, he appeared before the Magistrate of the Anti-Corruption Court through video link. The charges were read to him. The prosecution informed the court that investigations were still ongoing and he was then further remanded till 11<sup>th</sup> January 2021 when his case will come up for mention. No plea was taken as the magistrate lacked the jurisdiction to do so. He also lacked the jurisdiction to entertain an application for bail. This is the background to the application before this Court.

## GROUND S

The application is by Notice of Motion under the 1995 Constitution, The Judicature Act Cap 13, The Judicature (Criminal Procedure) (Applications) Rules SI 13-8 and the Trial on Indictments Act Cap 23 and is supported by the applicant's affidavit sworn on the 27<sup>th</sup> of December 2020. The main grounds of the application as stated in the Notice of Motion and affidavit are that: the offense charged is bailable and this Court has the discretion to grant bail, the applicant has a fixed place of abode within the jurisdiction of this Court at Kazinga Zone LC1, Kiwatule Parish, Nakawa Urban Council in Kampala District and substantial sureties who understand their obligation to the Court as sureties. Further that he is the sole bread winner for his twin sister who is ill and an elderly father and his incarceration in prison would place him and the family under tremendous social, psychological and economic pressure. The applicant is said to be in gainful employment as an Advocate of the High Court and Executive Director of Chapter Four Uganda, and undertakes that he is a law abiding citizen who will not abscond from the jurisdiction of the Court and will adhere to the orders of court regarding his bail conditions.

At the hearing, the applicant who is remanded at Kitalya Prison appeared through video link. He was represented by Advocates David Mpanga, Ellison Karuhanga, Robert Mackay and Pheona Nabaasa Wall while Stanley Moses Baine (CSA) and Stephen Ariong (SA) from the Office of the DPP appeared for the Respondent.

Counsel for the Applicant reiterated the grounds in the notice of motion and supporting affidavit. He presented four sureties. These were:

1. Mr. Francis Gimara, Senior Counsel and former President of the Uganda Law Society, Resident of Muyenga Hill V, Urban Council, Bukasa Ward Makindye Division. Copies of his Work Identity Card (ID) for ALP Advocates, National ID, Uganda Law Society (ULS) ID and Letter of introduction from the LC1 of his area introducing him to court were presented, along with a telephone contact.
2. Dr. Sylvia Namubiru Mukasa, Resident of Kataale Mayanja Village LC1, the Chief Executive Officer of Legal Aid Service Providers Network LASPNET. A Letter of introduction from the LC1 of the area, a copy of her National ID, Work ID and ULS ID and a letter from her employer were furnished to court. Her telephone contact was provided.



3. Advocate Kibuuka Diana Ninsiima, Resident of Bank Village LC 1 Naguru Parish Nakawa. Documents presented to court include the letter of introduction from the LC1 of the area, copies of the ULS ID, National ID and work ID. Her known telephone contact was provided.
4. Akiteng Isabella Resident of Kkungu Local Council 1, Kiira Municipality. She presented a letter of introduction from her area of residence, an introduction letter from her workplace Femme Forte Uganda, copies of her National ID and her passport.

All the sureties are said to be friends of the applicant.

Counsel for the applicant submitted that the sureties are substantial, know their obligation to the court and have close enough relationship to ensure that the applicant abides with any bail terms set. He prayed to court to release the applicant on bail and proposed that the applicant's passport be deposited with Court.

Counsel for the Respondent opposed the application on grounds contained in the affidavit in reply of D/AIP Ilokotam Sam of Criminal Investigations Department. He submitted that:

1. The applicant is charged with a serious offense carrying a maximum of 15 years' imprisonment or a fine of Ushs 2 billion or both upon conviction. This heightens the likelihood of the applicant to abscond.
2. Investigations are ongoing and exhibits are yet to be recovered therefore there is a high likelihood that the applicant will interfere with the investigations, being the CEO of Chapter Four. There is also a high likelihood of reoffending if released.
3. That the applicant had not proved exceptional circumstances as required under Section 15 of the TIA
4. That the case with which the applicant is charged involves a large sum of money and the sureties have not demonstrated ability to pay recognisance
5. That the applicant has not provided support documents to show he has a permanent place of abode. Further that the averments in the affidavit in support of the application regarding a sick sister and an elderly father have not been proved.

He prayed for court not to admit the applicant to bail. In the alternative, he prayed that stringent terms be imposed by Court to ensure the applicant does not abscond.

In Rejoinder Counsel for the applicant stated that there is no contention regarding the fixed place of abode as the address provided by the applicant is known to the police who conducted a search on the same premises. He presented a copy of the search certificate to Court confirming the same.

He submitted further that the seriousness of the offense isn't enough to constitute a flight risk and this can be addressed through the terms imposed by the court. He contended that bail should not be denied mechanically or on mere allegations, and that Court should be mindful of the presumption of innocence.

### CONSIDERATION OF THE APPLICATION

*Thell*  
I have listened to submissions of both Counsel, perused the affidavits for and against this application. I have also perused the annexures and documents presented before Court.

The purpose of bail is not to free an accused person from any charges that he may be facing, but rather to allow the person to stand trial without being necessarily detained in custody during that time.

The Constitution of Uganda guarantees the right to apply for bail in **Article 23 (6)** **(a)**. This right stems from the presumption of innocence enshrined in **Article 28 (3)** **(a)**. The essence and true meaning of the presumption of innocence enshrined in our constitution as regards bail is that an accused person need not suffer incarceration unreasonably as he or she is not yet a convict. However serious the nature of the charge against an accused, it remains an allegation until proven. The seriousness of the offense must therefore be balanced against the application of this presumption and other relevant factors when considering whether to grant bail or not.

It is the law that the discretion on whether to grant bail or not remains with the court but is to be exercised judiciously. Courts are not to deprive a person of liberty unreasonably. They are also expected not to deny bail merely as a punishment as this would conflict with the presumption of innocence **See Uganda versus Col (Retired) Dr Kizza Besigye, Constitutional Reference No 20/2005**. I am persuaded that in bail applications, courts should lean in favour of and not against the liberty of the accused as long as the interests of justice will not be prejudiced. **See the decision of Justice Mubiru Stephen in Abacha Yassin Versus Uganda, Arua Miscellaneous Application 4/2016**



**Section 14 of the TIA** grants this court power to release an accused person on bail at any stage of the proceedings, on taking from him a recognisance consisting of a bond, with or without sureties for such amount as is reasonable in the circumstances of the case, to appear before the court at such a date and at such a time as is named in the bond

**Section 15** of the same Act sets conditions under which court may refuse to grant bail. These include failure to prove exceptional circumstances to the satisfaction of the court or failure to prove that the applicant will not abscond if granted bail. The applicant did not plead exceptional circumstances in this application. It should be noted however that even in the absence of exceptional circumstances, court may still grant bail *See Foundation for Human Rights Initiative Versus Attorney General (Constitutional Appeal No 03/2009)*

It appears therefore that the main consideration on whether bail should be granted or not is whether the accused is likely to return for his trial and whether the release will prejudice the interests of justice and the interests of the community in ensuring that crime is addressed.

Court has to consider a variety of issues in arriving at a decision on whether accused will abscond, including:

1. Whether the applicant has a fixed place of abode within the jurisdiction of the Court or is ordinarily resident outside Uganda **Section 15 (4) (a) TIA**
2. Whether the sureties are sound within the meaning of **Section 15 (4) (b)** of the TIA
3. Whether the accused has on a previous occasion when released on bail failed to comply with the terms or conditions of the same **S 15 (4) (c) TIA**
4. Whether there are other pending charges against the accused **S 15 (4) (d) TIA**

Court also has to consider whether it is in the interests of justice for the applicant to be released on bail, whether there is a likelihood of his interference with investigations in the case or with witnesses, the nature of the case/allegations against the applicant, the stage of the proceedings amongst others. *See Jinja Misc Application No 75/2016 His Majesty Omusinga Mumbere Charges Wesley versus Uganda*

In this matter, I will pay attention to the specific grounds of objection raised by the state in opposing this application for bail.

**Fixed place of abode:**

It is contended by the State that the applicant did not furnish sufficient proof that he has a fixed place of abode within the jurisdiction of the Court. The objection of the respondent to the effect that the LC1 Chairperson did not know the specific location of the house in which the applicant lives has been considered by Court. It is noted that the LC I Chairperson who wrote the letter of confirmation of residence commented on Annexure X as follows: *"I know him personally but I don't know where exactly he resides in my area but he is a tenant"*. This statement in court's view confirms that the chairperson knows the applicant as a resident, a tenant of his area. The objection is further watered down by the evidence presented before the court that the police has gone to the premises, and in fact conducted a search. The search certificate shows that the property cited by the applicant in his notice of motion and supporting affidavit as his residence, is the same one that was searched by the police. The Search certificate is dated 23<sup>rd</sup> December 2020 and was made by D/ASP Ayebare Benon of SID Kireka. It appears that this is the same address on the charge sheet.

*Final* The court is satisfied that the applicant has a fixed place of abode within the jurisdiction of this Court at Kazinga Zone LC1 Kiwatule parish. There is no evidence that he is ordinarily resident out of the country.

### **Sureties:**

In assessing whether sureties presented before court are substantial, the court has to consider whether they are responsible members of the society who understand their duty to the court. Further, whether they are independent or are likely to be directed or controlled by the accused, whether they are capable of exercising a level of control over the accused as to ensure he obeys the terms of his bond. This is crucial because sureties play a supervisory role over the applicant to ensure that he returns to court as scheduled till the conclusion of the trial, or until they are discharged by court as sureties.

Court also considers whether they can be easily located in case the applicant absconds. This is usually determined from evidence of their places of abode, their work places and known contacts.

Further, as submitted by the Respondent's counsel, court considers whether sureties have the capacity to meet the bond requirements that will be set by the court as they undertake that if the accused fails to appear, they will pay a fixed sum of money to



the Government. See: *Obey Christopher, Kiwanuka Kunsu Steven, Lwamafa Jimmy versus Uganda, ACD Miscellaneous Application Nos 045,046 and 047/2015: Dr Ismail Kalule versus Uganda ICD Miscellaneous Application No 1/2018*

I have considered the sureties presented before the court and find them substantial. Being professionals and friends of the accused, court can safely conclude that he would not want to put the sureties in trouble with the Court by absconding from the law.

It is noted that the only objection raised by the Respondents regarding the sureties is that they have not demonstrated capacity to pay sums to which they may be bonded in case the applicant absconds. It's courts view that there's uncontroverted evidence before court that all the sureties are gainfully employed. The nature of their employment as demonstrated makes them capable.

*Interference with investigations and exhibits:*

The Respondent contended that there is a high risk of the applicant's interference with investigations if released on bail. He informed Court that investigations are still ongoing and that the applicant, being the CEO of Chapter Four has the capacity to interfere with exhibits and witnesses. It was further contended that there is a high risk of the applicant reoffending. The court finds insufficient basis for this claim by the Respondents. In *Panjur Versus Republic (1973) EA 282* it was stated that if Courts are simply to act on allegations, fears or suspicions, then the sky is the limit and one can envisage no occasion when bail will be granted whenever such allegations are made.

It is not enough to allege that the applicant is likely to interfere with investigations or reoffend. There should be justification for such an assertion. Such allegations must be proved. The applicant deponed that he is a law abiding citizen and there is no evidence to controvert that. I am unable to find, therefore that the applicant if released will tamper with the investigations.

Having carefully evaluated the factors for and against this application I am inclined to grant bail rather than decline it. It is this court's decision that the ends of justice will be met by granting the applicant bail.

For the reasons given above, I hereby grant the applicant bail on the following terms which I consider reasonable in the circumstances of this case and considering the nature of the allegations against the applicant:

1. The applicant shall execute a cash bond of Ushs 15 million
2. The applicant's passport will be deposited with the Registrar of the Court until disposal of the case or otherwise determined by the court.
3. The applicant shall report to the Registrar of the Court every two weeks with effect from the date of his release.
4. Each of the sureties shall each execute a bond of Ushs 100 million (not cash)



Jane Okuo Kajuga

Judge of the High Court

30.12.2020