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[Signature]

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**(CRIMINAL DIVISION)**

**CRIMINAL MISCELLANEOUS APPLICATION No. 0215 OF 2022**

*(Arising from Kajjansi Chief Magistrates Court Criminal Case No. 14/2022)*

**PARIO ERIC** ..... **APPLICANT**

**VERSUS**

**UGANDA** ..... **RESPONDENT**

**BEFORE HON. JUSTICE MICHAEL ELUBU**  
**RULING**

This Application is commenced under Articles 23 (6) (a) and 28 (3) (a) of the **Constitution of the Republic of Uganda, 1995** as amended; Sections 14 (1) (a) of the **Trial on Indictment Act**; Rule 2 of the **Criminal Procedure (Application) Rules S1 14-1** and the **Constitution (Bail guidelines for Courts of Judicature) (Practice) Directions, 2022**.

The Applicant, **Pario Eric**, seeks an Order that he be released on bail pending hearing of his case.

The Application is premised on the grounds set out in the Notice of Motion and further particularized in the affidavit deposed by the Applicant.

It is stated the Applicant was arrested in February 2022 at Ngobe-Bunamwaya Division, in Wakiso District. In March, 2022, the Applicant was produced before the Chief Magistrates Court of Kajjansi, and charged with the offence of Murder. He was thereafter remanded in Kigo Prison where the stays to date. On the 10<sup>th</sup> of October 2022, he was committed to the High Court for trial. That his case has never been fixed and he is not aware when the trial will commence.

The applicant adds that he has a fixed place of abode at Ngobe Bunamwaya, Makindye Ssabagabo in Wakiso District.

That he has a wife and children and is the sole bread winner for the family who are gravely affected by his continued detention as he is not available to provide for them.

That the offence the Applicant is charged with is not a grave offence besides he is innocent until proved guilty. That the deceased died of severe pneumonia as stated in the post mortem report. That the murder charges against the Applicant are therefore unsubstantiated.

The Applicant affirms that he will not abscond if granted bail. That he has sound sureties who all reside within the jurisdiction of this Honourable Court.

The Applicant adds that he was on remand for more than 180 days before his case was committed to the High Court.

The state (respondent) opposes this Application and through an affidavit in reply deposed by Kiiza Anna, a Chief State Attorney in the Office of the Director of Public Prosecutions, states that it is not true that the Applicant has a permanent place of abode at Ngobe Bunamwaya Ssabagabo, Wakiso District.

That there is a high likelihood he will abscond thereby rendering the trial nugatory. That it is not true that the Applicant has substantial sureties.



That the Applicant is charged with the serious offence of Murder C/s 188 and 189 of the **Penal Code Act**. It attracts a maximum sentence of death on conviction. It is averred that it is not true that the preferred charge of murder is not sustainable.

That the Applicant is already committed to the High Court for trial implying that he knows the evidence assembled against him. That a release on bail may lead to his disappearance. She adds that it is not true that the Applicant is the sole bread winner of his family.

That the Applicant has not advanced any ground to show that there are any exceptional circumstances for the grant of bail in his case.

The respondent states that it is in the interest of justice that the Application be dismissed for lack of merit.

### **Submissions**

The Parties in this Application were directed to file written submissions which are on record and will not be reproduced here. Nevertheless, they have been studied and will be referred to in the determination of the Application.

### **Determination**

The 5<sup>th</sup> Edition of the **Oxford Law Dictionary** defines bail as the release by the Court of a person held in legal custody while awaiting trial. The right to apply for bail stems from the presumption of innocence that is enshrined in Article 28 (3) (a) of the **Constitution**.

Article 23 (6) (a) of the **Constitution of the Republic of Uganda**, grants this court the discretion to grant bail. It stipulates:

Where a person is arrested in respect of a criminal offence 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

While the constitutional provision expressly provides for the right to apply for bail, it is however left to the court to determine, in its discretion, whether or not to grant that bail. In **Constitutional Reference No. 20 of 2005; Uganda v Col (Rtd) Dr Kizza Besigye** it was held that under Article 23(6) (a) of the Constitution, the accused is entitled to apply for bail. The word “entitled” creates a “right” to apply for bail and not a right to be granted bail.

In exercising that judicial discretion, the Court considers all that is before it and reaches its decision without taking into account any reason that is not a legal one. The Court acts within the rules of reason, justice and law, within the limits and the objects intended by a particular legislation (See: **R v Board of Education [1990] 2 KB 165**).

Additionally, when exercising its discretion, a court will the need to balance the rights of the applicant and the best interests of justice as well as the needs of society.

It is Sections 14 and 15 of the **Trial on Indictments Act Cap. 23 (TIA)** that operationalise Article 23 (6) of **the Constitution** and govern the release on bail by the High Court. That the legislation within whose limits the court exercises its discretion.

It is stipulated under Section 14 (1) of the **TIA** that:

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 (1) of the **TIA** stipulates:

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.

Section 15 (3) of the **TIA** provides:

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.

**The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions 2022)** which are meant to give effect to the different provisions relating to bail, also make provision for circumstances or parameters within which the court will exercise its jurisdiction.

Turning to the instant case, it is true the Applicant is charged with the offence of Murder contrary to Sections 188 and 189 of **the Penal Code Act**, an offence for which this court has the discretion to grant bail.

The applicant has not adduced any evidence of exceptional circumstances. He relies solely on the discretion and good sense of this court to determine whether or not he should get bail.

In all bail applications the primary consideration remains whether, if granted bail, the applicant will report for trial. In making that determination the court is guided by Section 15 (4) of the **TIA** which requires proof of a fixed place of abode and production of substantial sureties as some of the considerations employed to determine whether the Applicant will abscond.

The applicant stated that he has a fixed place of abode at Ngobe Bunamwaya, Makindye Ssabagabo, Wakiso District. There are also sureties he has relied on.

These two factors are not all. The court will ordinarily also look at other circumstances that surround the case including the seriousness of the offence and whether the applicant has been committed to the high court for trial. Those are factors that a court cannot turn a blind eye to. Here we have an allegation of murder which attracts a maximum sentence of death.

With regard to the sureties, Section 15 (b) of the **TIA** and Clause 15 (1) of the **Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions 2022** guide the Courts in exercising their powers to determine the suitability of sureties. The provision requires the Courts to consider the age; work; residence address; character and antecedents of sureties. On top of any other relevant factor, the court should also investigate the relationship between the surety and the accused person. The surety should also provide identification documents like a national identity card together with LC introductory letters.

In this instant case, the applicant has not provided any kind of detail regarding how the sureties would be traced if required. Where an accused person cannot be traced,



the court holds the sureties accountable. For that reason, whether or not a surety is substantial includes personal details of how a surety can be tracked down. In that case, it is the identification documentation like National identity cards or introduction letters from the Local Council where they are ordinarily resident which would be required to enable the tracing of the surety.

The courts have noted that the paramount purpose of a surety is to ensure that the applicant appears for trial whenever required and if not to notify the Court of the Accused person's absence (**Mumbere v Uganda M.A. 75 of 2016**). That a substantial surety is one who is capable of being traced or located. This should be established from his introduction letters and identification documents (see **Kalule v Uganda M.A. 001 of 2018**).

As stated before, the decision whether to grant bail is discretionary. The applicant here is charged with a serious offence. He has however not provided the safeguards, through his sureties, to persuade this court that he can be tracked down and produced through them, if he absconds.

Having considered all the circumstances, and in view of all the foregoing, it is my considered view that bail shall not be granted.

Accordingly, the Application fails and is dismissed.



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**Michael Elubu**

**Judge**

**17.10.23**