

THE REPUBLIC OF UGANDA
IN THE HIGHCOURT OF UGANDA AT KAMPALA
(CRIMINAL DIVISION)

CRIMINAL MISCELLANEOUS APPLICATION No. 113 OF 2022
(Arising from Criminal Session Case No. 0088 of 2022)

DDUNGU EDRINE
alias MUKKO

.....

APPLICANT

VERSUS

UGANDA

.....

RESPONDENT

BEFORE: HON. MR. 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**; Sections 14 and 15 of the **Trial on Indictment Act**; and Rule 2 of the **Judicature (Criminal Procedure) (Applications) Rules**.

The Applicant is **Ddungu Edrine alias Mukko** and seeks an order of release on bail pending the hearing of his Criminal Case.

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

Ddungu Edrine alias **Muko** states that he was arrested and charged with the offence of Aggravated Defilement Contrary to Section 129 (4) (b) and (c) of the **Penal Code Act**. He was then remanded in Kigo Prison. The Applicant avers that this Court has the discretion to grant bail pending his trial. He states that he has a permanent place of abode and will not abscond if released on bail. That he does not have any record of ever jumping bail or police bond. That he has sound and substantial sureties who are willing to stand for him. And finally that he undertakes to abide by all the conditions set by the Court.

The respondent opposes this application. Through an affidavit deposed by **Adong Harriet**, a Senior State Attorney in the Office of the Director of Public Prosecutions, it is stated that the Applicant is charged with a serious offence (Aggravated Defilement) which carries a maximum sentence of death. That the Applicant was committed for trial. That he has failed to prove that he has a permanent place of abode within the jurisdiction of the Court and is therefore likely to abscond. That the sureties presented by the Applicant are not substantial.

Submissions.

The parties filed written Submissions but the same are not reproduced here. The same have been studied and will be referred to in the determination of the Application.

Determination.

Bail is a recognizance between the accused and court; a conditional release on the understanding that the accused person will be in Court whenever required. It allows the accused to avoid pre-trial detention and enables him or her to attend court from home.

The right to apply for bail stems from the presumption of innocence that is enshrined in Article 28 (3) (a) of the **Constitution of the Republic of Uganda, 1995**.

The Applicant has a right to apply for bail. The decision whether to grant bail is an exercise of judicial discretion.

According to the 8th Edition of the **Black's Law Dictionary**, judicial discretion is the exercise of judgment based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not act when a litigant is entitled to demand the act as a matter of right.

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**).

Further, the Court balances 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** regulate release on bail by the High Court.

Section 14 (1) of the TIA, provides:

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 recognizance 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 states:

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 (4) of the TIA specifies that the applicant must prove that he will not abscond.

It states:

(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.

I have examined the Application and submissions filed by both parties. It is true the applicant enjoys a presumption of innocence under the Constitution of the Republic of Uganda. However, when charged with a criminal offence, the primary consideration in determining an application for bail, is whether the Applicant will be available to attend his trial whenever required by the Court. Section 15 (4) of the TIA that is cited above, lays down the parameters the Court uses to satisfy itself that the Applicant will attend his trial or not abscond.

In the instant case, the Applicant is charged with Aggravated defilement, an offence which carries a maximum sentence of death. The gravity of the offence is a consideration in the determination of this Application. That is just one factor; the other factors are whether he has a fixed place of abode and substantial sureties.

In **Miscellaneous Application 65 of 2005 Mugenyi Steven vs Uganda** it was held that the onus is on the Applicant to satisfy that he has a permanent place of abode in a particular known village, sub county and district.

In my view it is imperative that information about place of abode and sureties should be properly articulated. That is what gives assurances of an address to which the applicant can be traced with certainty in the event that he absconds. It mitigates against any risk of permanent absence from trial.

The applicant has not named or given any particulars as to his place abode.

The other important consideration would be sureties. While the Applicant stated that he has substantial sureties again he did not name any for scrutiny by the court. Sureties are crucial in a matter like this one. They undertake to ensure the presence of the accused. They act as an additional layer of assurance and are required to personally make an undertaking to that end. They must demonstrate an ability to monitor the accused and cause his presence in court for trial.

All the above requirements are missing here. As it stands, this court finds the circumstances of this application require that the application must fail.

It is accordingly dismissed.



Michael Elubu

Judge

15.03.24