

THE REPUBLIC OF UGANDA
IN THE HIGHCOURT OF UGANDA AT KAMPALA
(CRIMINAL DIVISION)
CRIMINAL MISCELLANEOUS APPLICATION No. 050 OF 2023
(Arising from Criminal Session Case No. 0738 of 2022)

NANKINGA BENITAH **APPLICANT**

VERSUS

UGANDA **ESPONDENT**

BEFORE: HON. MR. JUSTICE MICHAEL ELUBU
RULING

This Application is commenced under Articles 2 (1), 23 (1) (b) (c), 23 (6) (a), 28 (3) (a) and 44 of the **Constitution of the Republic of Uganda, 1995**; and Section 15 of the **Trial on Indictment Act**.

The Applicant, **Nankinga Benitah**, seeks an Order of release on bail pending her trial.

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

It is stated that on the 25th January 2022, **Nankinga Benitah**, was arrested and charged with the offence of Aggravated Robbery Contrary to Section 285 and 286 (2) of the **Penal Code Act** and was remanded. That she is a permanent resident of Kiwafu B Urban village, Kansanga B ward in Makindye Division. That the Applicant is a mother of one child who needs her care and attention. That prior to arrest, the Applicant had never been accused, arrested, charged or convicted of any offence. That the Applicant has three substantial sureties who will ensure that she reports and attends trial whenever required by the Court. That she will abide by all conditions set by this Honourable Court until the determination of the case against her. That it is the Applicant's constitutional right to apply for and be granted bail.

The State opposes the Application through an affidavit deposed by **Adong Harriet**, a Senior State Attorney, in the Office of the Director of Public Prosecutions. That the Applicant is charged Aggravated Robbery contrary to Section 285 and 286 of the **Penal Code Act** a serious offence of which carries a maximum sentence of death. That the Applicant has been committed for trial making her likely to abscond if released. That she will interfere with prosecution witnesses since they are known to her. That the Applicant failed to prove that she is a mother of a child who needs care and attention. That she has also failed to prove that she was a law abiding citizen. That the sureties presented by the Applicant are not substantial as they failed to show that they have fixed places of abode. That the Applicant also failed to prove that she has a fixed place of abode within Kiwafu "B" Urban Village Kansanga "B" Ward Makindye. Her place of abode is merely temporary. It is therefore in the interest of justice that the Application is denied.

Submissions

The Parties filed written submissions which are on Court record. This Court has not reproduced them here, but they have been carefully studied and utilized in the determination of this Application.

Determination

The right to apply for bail is stipulated under Article 23 (6) (a) of the **Constitution of The Republic of Uganda, 1995**.

Article 23 (6) (a) of the **Constitution**, provides:

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.

The above provision on the right to apply for bail stems from the presumption of innocence which is entrenched under Articles 28 (3) (a) and 44 of the **Constitution**. It is the object of bail to ensure that the accused person appears to answer charges against him or her without being detained on remand in prison. In effect, it is a temporarily release of the applicant from custody.

While the constitutional provisions expressly provide for the right to apply for bail, it is left to the Court to determine, in its discretion, whether to grant 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**).

Further, in exercising its discretion, the Court balances the rights of the Applicant and the best interests of justice as well as the needs of the society.

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

The Applicant in instant case is charged with the offence of Aggravated Robbery contrary to Sections 285 and 286 of the **Penal Code Act**. It is an offence only triable by the High Court which is therefore the only court with the jurisdiction to consider an Application for bail.

It is important however, to emphasise that each application for bail is to be determined upon its unique circumstances. One of the primary considerations 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; production of sound sureties; whether the accused has on a previous occasion when released on bail failed to comply; whether there are other charges pending against the accused among other factors.

The Applicant stated that she is a permanent resident of Kiwafu B Urban village, Kansanga B Ward, Makindye. A permanent or fixed place of abode should be an address to which an applicant can be traced with certainty. There is an introduction letter from the local authorities asserting that the Applicant lives in Kiwafu B Urban village, Kansanga B Ward, Makindye. The Respondent averred that the applicant's place of abode is merely temporary. Other than stating so, there is no evidence from the respondent to rebut the applicant's assertion that she has a fixed place of abode.

The Applicant also named three persons as sureties: Kasiita John, Obwang Paul and Kinene Billy. In determining the suitability of sureties, Clause 15 (1) of the **Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions 2022** guides the Courts on factors to taken into consideration when evaluating sureties. They include the age; work; residence address; character and antecedents of sureties. 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.

The Applicant attached introduction letters and Photostat copies of The National Identity Cards of the proposed sureties. I find the documentation satisfactory. I have also considered the relationship of the proposed sureties to the Applicant. I find the sureties substantial.

As stated before, the decision whether to grant bail is discretionary. The Applicant here is charged with a serious offence. Although the Applicant is charged with a serious offence, having considered the circumstances of the case, I find that the Applicant has satisfied all the conditions for grant of bail by this Court.

While it is true that the applicant is charged with a serious offence, I have taken into consideration the fact that she has a child to take care of. This court can compel and also get obtain assurances of the applicant attending trial to ensure that justice is done. But it is also material to meet the best interest of the applicant's child.

Therefore, the Applicant is granted bail in the following terms:

1. The Applicant shall execute a **cash** bond of 1,000,000/- (one million shillings).
2. Each surety is bonded in the sum of 5,000,000/- (Five million shillings) **not cash**.
3. The Applicant shall report to the Registrar of this Court every first Monday of the month.
4. The Applicant shall not leave the jurisdiction of this Court without prior notification being given to the Registrar, Criminal Division of the High Court.



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Michael Elubu

Judge

31.3.24