

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
CRIMINAL MISCELLANEOUS APPLICATION NO. 247 OF 2007
(Arising out of Nakawa Court Criminal Case NAK-CR-JAA-61-04)

ODEKE GEORGE ::: APPLICANT

VERSUS

UGANDA ::: RESPONDENT

BEFORE: HON. JUSTICE J.P.M TABARO

RULING:

The applicant, George Odeke stands indicted for defilement c/s 129(1) of the Penal Code.

He is alleged to have had sexual intercourse with a girl under the age of 18 years, in November, 2004, at Naguru Mobile Police Unit Barracks in Kampala. Since then he remains in custody pending trial. From the record of proceedings so far it would appear he was committed for trial in High Court in 2005. According to the Counsel for the State, Ms. Tumuhaise the DPP is ready to proceed with the prosecution in April, 2008.

He is before Court for the purpose of seeking an order for release on bail, pending trial. His Counsel Mr. Kwizera, relies on two grounds, under Art. 26(6)(a) and Art.28(1) and 3(a) of the Constitution, namely;- the right of an accused person's to apply for bail, and secondly on the basis that the delay in proceeding with trial his right for speedy trial has been violated.

I have much sympathy for the accused's Counsel's submission Under Art. 28(1) of the Constitution. The delay is inordinate and unexcused Art. 28(3)(a) of the Constitution enacts the principle of presumption of innocence.

The applicant resides within the jurisdiction of Court, as to the sureties. With the Constitutional Court's ruling in Constitutional deference No.20 of 2005, Uganda (DPP) Vs. Col. Rtd. Dr. Kiiza Besigye, there can be no doubt any move that Court has discretion whether or not the accused/applicant can be released on bail, pending the determination of the case.

On 13-2-2008 when this application was urged, it transpired that the accused thumb printed his affidavit instead of signing it. He claims to be a student at Secondary School, in Year II. His explanation is that in prison he was not allowed to use a pen, for writing; the prison authorities are stated to have refused to avail him a pen for writing his name on the affidavit. This is quite possible, but highly doubtful.

The charge of defilement is very grave. While the DPP should not be permitted to have the accused in custody indefinitely without trial, at the same time the law should not be trifled with. The applicant's knowledge would tend to indicate he is not in year two in a secondary school, when his application was being urged by his Counsel it was clear that he could not name any of the subjects taught in secondary school. Of course he is not on trial now and since he is not testifying I cannot say, legally, whether or not he is, truthful person. I am conscious of the principle that the onus will be on the State to prove the charge beyond reasonable doubt, and it is not for the accused to establish his innocence through truthful statements. However, it is doubtful whether he would honour his bail if granted, if he is ready to deceive Court now.

For the above reasons I am reluctant to release the accused. The application is rejected and hence the accused shall be remanded in custody pending trial. If by the end of April, 2008 the trial has not commenced he will be at liberty to renew his application, for whether he is truthful or untruthful the State is not entitled to have him remanded in custody indefinitely; if it cannot proceed with prosecution, the accused should have the right to be released on bail pending trial. For the time being, the application is declined. He is remanded on custody pending trial, not later than 30-4-2008 when he should be brought before Court, if by then the trial has not commenced.

If by then trial is in progress then, needless to emphasise the matter will be for the trial judge.

J.P.M. Tabaro

Judge

25-2-2008

Accused present.

Mr. V. Kwizera for the applicant

Counsel for the respondent absent

Ruling delivered.

J.P.M Tabaro

Judge

25-2-2008