

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
CRIMINAL MISC. APPLICATION NO. 05 OF 2008

MALIBANO ABDUL & Ano. ::::::::::::::::::::::::::::::: APPLICANT

VERSUS

UGANDA ::::::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE J.P.M TABARO

RULING

This morning the two accused persons/applicants Abdul Malibano, and Badru Mukasa, applied for release on bail pending trial. The DPP has been aware of the fixtures for hearing since 5-2-2008 but was not represented. There was no application for an adjournment and so hearing proceeded ex parte. Mr. V. Kwizera appears for the applicants.

The applicants stand indicted for murder C/SS 188 and 189 of the Penal Code. On 19-4-2006 they were committed to High Court for trial. The gravamen of Mr. Kwizera's application is that the applicants have inordinately been kept in custody without trial, and hence their constitutional right to speedy trial has been violated. The expression speedy trial is not defined in the constitution.

The case of **Uganda (DPP) Vs. Col (Rtd) Dr. Kiiza Besigye, Constitutional Reference No. 20 of 2005** is authority for the proposition that whether or not bail is granted is a matter for the discretion of the Court.

The charge is capital and hence there is temptation to abscond if bail is granted. I am aware that bail can be granted in capital offences but no general rule can be laid down. Each case must turn

on its own merits or demerits. I have looked at the summary of evidence, which in my opinion Court is entitled to do, so long as the same judge does not preside over the trial. Prima facie there is ground for charging the accused – of course one cannot say whether at trial with cross examination the same will be said. Murder is a most grave criminal contravention and I would not lightly grant this application in view of seriousness of the charge, and due to the fact that the accused persons have already been committed for trial.

I am alive to the fact that the applicants and the sureties reside in Mukono within the jurisdiction of Court. However, as is well known, this factor alone does not make bail automatic. The bail application is dismissed due to the gravity of the offence. As learned counsel for the applicants, Mr. Kwizera, submitted speedy trial is a constitutional requirement. I would urge the DPP to arrange, with the Deputy Registrar (Crime) of High Court, to fix a date for trial of the accused persons without further delay. But, in the meantime, the accused/applicants shall be remanded in custody.

J.P.M. Tabaro
Judge

14-4-2008

Later in the afternoon

Accused/applicants before court.

Mr. V. Kwizera for the applicants

Counsel for the State not present.

Ruling delivered.

J.P.M. Tabaro
Judge

14-4-2008