

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT GULU
HCT – 02 – CR – MA – 0033 – 2008
(Arising from Apac Cr. Case No. 492/2007 & 507/2008)

OPIO BUA JAMES :::APPLICANT

VERSUS

UGANDA:::RESPONDENT

BEFORE: HON. JUSTICE REMMY KASULE

RULING

The applicant is charged with robbery c/s 285 and 286 of the Penal Code Act, and unlawful possession of ammunicions c/s 3(2) (a) of the firearms Act. He applies to be released on bail, this being his second application, the first one i.e. Criminal Miscellaneous Application No. 1 of 2008, having been refused by this court on 12.02.2008, as court found that the applicant had not discharged the burden upon him to persuade court to exercise its discretion by releasing him on bail.

The applicant, a member of the Uganda Police Force, who at the material time, was second in-charge of Kangai Police Post, bases his application for bail on the grounds that he has permanent residence, produced substantial sureties, supports his wife, children and relatives, some elderly, and enjoys the constitutional presumption of innocence. He has been on remand since 30.11.2007, and his continued remand deprives him of a fair and speedy trial. He has never been convicted of any crime before, has not interfered with any witnesses or investigations, and there is no evidence that he will, if released on bail.

On the other hand, the offences of robbery by use of a gun, and that of being in unlawful possession of ammunicions are very serious offences carrying respective maximum sentences of death and imprisonment up to ten (10) years.

Given the serious nature of the said offences, the applicant would, in the normal course of things, be required to prove the existence of an exceptional circumstance before being released on bail: See Sections 14 and 15 of the Trial on Indictments Act.

No exceptional circumstance has been proved by the applicant.

The absence of exceptional circumstances, notwithstanding, this court, has, in the exercise of its discretion, powers to release the applicant on bail: See Constitutional Court Constitutional Reference No. 20 of 2005: Uganda(DPP) vs Col. Rtd. Dr. Kiiza Besigye

and

Constitutional Court Constitutional Petition No. 20 of 2006 **Foundation For Human Rights Initiatives**

Versus

Attorney General.

The burden is upon the applicant to put before court such an overall set of circumstances, going beyond the normal considerations, to convince court to exercise its discretion by granting bail.

In this particular application, this court finds that the applicant has not discharged that burden.

The application for bail fails. The same stands dismissed. The same may be renewed as and when the applicant, in his judgment, is in possession of such set of circumstances for court to exercise its discretion by granting bail.

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Remmy Kasule

Judge

23rd May 2008