## THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT GULU

HCT - 02 - CO - MA - 48 - 2008

(Arising from Cr. Case No. AA. 112/2008)

## BEFORE HONOURABLE JUSTICE REMMY K. KASULE

## **RULING**

The applicant applies to be released on bail pending his trial for the offence of aggravated defilement c/s. 129 (3) and 4(a) of the Penal Code (Amendment) Act, 2007. He is being charged under Criminal case Number AA. 112 of 2008. He has already been committed to the High Court for trial. The offence is alleged to have been committed on 15.05.08.

The application is brought under Article 23(b) (a) of the Constitution and section 14(1) of the Trial On Indictment Act, Cap.23

Court is satisfied that the applicant has established residence and the sureties he has produced to court are substantial.

It is also within the overall discretionary powers of this court, exercised judicially, to grant bail to the applicant, even in absence of proof of exceptional circumstances as is required of the applicant by section 15(1) of the Trial On Indictment Act, Cap. 23. See <u>Constitutional Court</u> <u>constitutional Reference No. 20 of 2005: Ugandan (DPP) vs Col. (Rtd) Kiiza Besigye.</u> and also

<u>Constitutional Court Petition No. 20 of 2006 Foundation for Human Rights Initiatives vs</u>
<u>Attorney General.</u>

This court has recently held in **High Court at Gulu Miscellaneous Application No. 37 of 2008** 

Bongomin Richard Akal vs Uganda that:-

"The burden is upon the applicant to satisfy court by putting forth before court a set of facts,

beyond the ordinary considerations, upon which the court can act, in the exercise of its

discretion, to admit the applicant to bail"

The applicant, in the considered view of this court, has not put forward such a set of facts for this

court to exercise its discretion and grant him bail. All the facts he has put forward are the

ordinary considerations for bail, not envisaged under section 15(1) of the Trial On Indictment

Act.

Court also notes that the alleged victim, is a minor below the age of 14 years, and her mother,

Akullu Christine, has filed an affidavit in opposition to granting the applicant bail, asserting that

an attempt was made to take the alleged victim to the applicant's father's home with a view to

having the victim exonerate the applicant of the alleged offence. A letter dated May 27<sup>th</sup>, 2008,

signed by applicant's father produced to court by counsel for the applicant, seems to support the

assertion of Ms. Akullu Christine, mother of the victim.

Court is therefore not satisfied that that this is a proper case where it should exercise its

discretion to grant bail to the applicant.

The application for bail fails. The same stands dismissed.

Remmy K. Kasule

Judge

14th July 2008

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