

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

CRIMINAL APPLICATION NO. 008 OF 2011

(From Rukungiri Cr. Case 30 of 2011)

TUMWESIGYE CHARLES

VERSUS

UGANDA:..... RESPONDENT

BEFORE THE HON JUSTICE J.W.KWESIGA

R U L I N G

This application for bail pending trial was brought by Tumwesigye Charles alias Kafupi A1 in the Criminal case pending in the Chief Magistrate’s Court at Rukungiri. The Applicant, represented by Mr. Wilfred Murumba, stated the application was brought under Article 23 (6) and 28 (3) of The Constitution of the Republic of Uganda and Sections 5, 14 and 15 of Trial on Indictment Act.

Mr. Arinaitwe Rajab, Resident State Attorney, appeared for the Respondent.

The Accused/Applicant is charged with Terrorism C/SS 7 (2) (A) and 7(1) (b) of the Anti Terrorism Act, 2002. The Applicant relied on advanced age and grave illness as exceptional circumstances to justify his release on bail.

At the hearing, the Applicant's Advocate appears to have abandoned the ground of grave illness and concentrated on Advanced age as the basis for this Application. The Applicant in proof of his age presented his Voters Registration card that shows he is over 60 years of age. The state does not contest that he is over 60 years old. The charge sheet states he is 66 years old. From his appearance in my view he looks over 60 years of age. The learned State Attorney objected to the Application basically on the ground that the Accused person is charged with is a very serious offence that attracts death sentence.

Article 23 (6) (a) of The Constitution of The Republic of Uganda gives this court the discretion to grant or not to grant bail to an Accused person facing a charge of a Capital nature. It does not make it automatic unless the conditions set out in Article 23 (6) (c) of The Constitution have been satisfied, namely having been on Remand for 180 days.

From the records available the Accused person was charged on or about 20th October, 2011 the date of the charge sheet which is not even two months (60 days) yet, therefore the Accused person can not benefit from automatic bail.

He has not proved the medical conditions averred in the Notice of motion. The exceptional circumstance of advanced age is some of the matters this court is enjoined to consider in the courts discretion. The State Advocate told court that he is unable to reply

firmly because the Police file is with the D.P.P to determine the next course of action which may include to commit the Accused, to call for further inquiries and even to drop the charges.

The Submission of the State Attorney does not disclose any danger in granting bail at this stage in as far as investigations are concerned. In a case like this one Bail would be denied if there was an indication that the Liberty of the

Accused/Applicant would affect the Prosecution's case or that the Accused person is a danger perse or that he is likely to escape his trial. There is no doubt that prison conditions are not favourable to health of an old man aged 66 years, who in any case, is presumed innocent until he is proved guilty. The Applicant has presented two substantial sureties and I am satisfied that they would prevail over him to make sure that he shall return to court for his trial. Having found that exceptional circumstances have been proved, this court must give stringent terms that will prevent the Accused/applicant from contemplating absconding from the Jurisdiction of this court to escape his trial.

I have decided that the Applicant shall be released on bail pending trial on the following terms and conditions:-

1. The Applicant shall provide security for his bail, the land Title of his residence or

any other property in his name. **ALTERNATIVELY** pay cash **Bail Bond of Shs.**

5,000,000/ = (Five Million shillings only).

2. Each of his two Sureties shall execute NON-CASH BOND of Sh. 10,000,000/= (Ten million shillings only).

3. The Accused/Applicant person shall report before the Chief Magistrate's Court at Rukungiri for bail extension every two weeks on the dates when the case of his co-Accused persons appears for mention until the date of committal or other court directions.

Dated at Kabale this 7th day of **December, 2011.**

**J.W.KWESIGA
JUDGE**

7-12-2011

Read in presence of:-

Mr. Arinaitwe Rajab for Respondent.

Mr. Murumba Wilfred for the Appellant. Mr. Joshua

Musingunzi - Court clerk.