

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA
HOLDEN AT KAMPALA**

**CRIMINAL MISC. APPLICATION NO. 006 OF 2012
(ARISING FROM BUGANDA ROAD CRIMINAL CASE NO.086/2011)**

**OKELLO AUGUSTINE:::APPLICANT
VERSUS
UGANDA:::RESPONDENT**

BEFORE: THE HON. JUSTICE LAMECK N. MUKASA

Representation:

Mr. Ondimu Duncan of counsel for Applicant

Mr. Emmanuel Muwonge Senior State Attorney for State

Court Clerk:

Mr. Kutosi Charles

RULING:

The Applicant , Okello Augustine, with seven others, were on 1st August 2011 charged at Buganda Road Chief Magistrate Court with treason c/s 23(1)(c) and (d) of the Penal code Act. On the same charge sheet one of his co-accused, one Byamukama Aggrey was charged with Concealment of Treason C/S 25 of the Penal Code Act.

Vide HCT-OO-CR-CM-0051-2011 the applicant sought bail which was rejected on 24th October 2011. The Applicant now brings his second application under Articles 23(6)(a) and 28(3)(a) of the Constitution, sections 14(1) and 15(1)(b), (4) of the Trial and

Indictment Act, and rule 2 of the Judicature (Criminal Procedure) (Applications) Rules seeking to be released on bail pending trial. The grounds for his application are set out in the Notice of Motion and further expounded in his affidavit in support.

Article 23(1) of the Constitution provides that no person shall be deprived of personal liberty except in any of the cases provided therein. Article 28(3)(a) of the Constitution presumes every person who is charged with a criminal offence to be innocent until proved guilty or until the person has pleaded guilty. To preserve every persons fundamental right to liberty and to promote the presumption of innocence Article 23(6)(a) of the Constitution grants a right to any person charged with a criminal offence to apply for bail and grants court the discretion to grant or deny bail.

The importance of bail as the judicial instrument for ensuring the liberty of the individual was expounded by Hon. Justice James Ogoola in HCT Crim Misc. Appl No. 228 and 229 of 2005, Col (Rtd.) Dr. Kizza Besigye vs Uganda.

The Constitutional Court in Constitutional Reference No. 20 of 2005 Uganda (DPP) vs Col. (Rtd) Dr. Kizza Besigye laboriously laid down the reasonable conditions the court should keep in mind in the exercise of its discretion to grant or refused to grant bail. Also the Constitution in Article 126(4) requires court to exercise judicial power in the name of the people and in conformity with the law, and with the values, norms and aspirations of the people.

In Constitutional Petition No. 46 of 2011 & Constitutional Reference No. 54 of 2011 – Hon. Sam Kutesa and others v/s A/G and Uganda, in emphasis of the right to liberty, the Constitutional court stated:

“ The Genesis of the right to bail is the protection of the right to liberty. It is now axiomatic that the right to liberty is a universal human right and freedom which is inherent and not granted by the state. Article 20(2) of the Constitution enjoins all organs and agencies of Government and all persons to respect, uphold and promote the fundamental rights and freedoms, which also includes the right to bail”

However there should be peace and safety of the people and their property. The courts of law and all other organs of Government have a duty to ensure that national and international security is preserved. Therefore the fundamental rights of the individual must be balanced with this greater public interest. In this regard court has to consider whether there is justification to interfere with the accused’s right to liberty pending his/her trial.

The rationale of granting bail is that instead of keeping a suspect under the harsh conditions of remand who might in the end be found innocent, he should not be incarcerated if the court is satisfied that he will turn up to answer the charges. So Court must be satisfied that in the circumstances of the particular cases, the accused person will turn up to answer the charge at the trial and whenever he is required by court.

In that regard court must be conscious of the likelihood to abscond and/or interfere with the investigations, witnesses and/or evidence. Court has to weigh the gravity of the charges against the accused and the severity of the attendant sentence for the charge. The more serious the offence, the higher the temptation for an accused to abscond when released on bail.

Therefore court must even be more cautious while exercising its discretion to or not grant bail in the case of serious charges. In that regard court is guided by the factors and the existence of exceptional circumstances set out in section 15 of the Trial on Indictment Act and discussed in Col (Rtd.) Dr. Kiiza Besigye v/s Uganda HCT Crim Misc. Application No. 228 & 229 of 2005. The guiding consideration is whether or not the release of the Accused on bail is likely to prejudice the pending trial.

The Applicant is charged with treason which is a serious offence that threatens national security and affects the safety of the people and/or their property. The applicant is however still presumed innocent. The applicant avers in his affidavit that he was committed to stand trial at the High Court on 6th January, 2012 but contends that his case has not yet been fixed for hearing and he has no other pending charges. Charges had earlier been read to him on 1st August 2011 and since remanded in Luzira Upper Prison which is a period now over eleven (11) months. The Applicant, like any other Accused person, has a right to a fair, speedy and expeditious trial. He also avers that he has a fixed place of abode at Adokokwok Sub-county, Erute South Constituency, Lira District, owns land in Lira Municipality where he has constructed a rental house.

In paragraphs 9, 18 and 19, the Applicant avers that he suffers from High Blood Pressure, Ulcers and asthma. That he also suffers from chest pains, his breathing difficult, his health condition continues to deteriorate while in prison and cannot access proper medical treatment. This is confirmed by a Medical Report by Dr. Andama Joseph, Medical Superintendent, Marchison Bay Hospital. He thereon states that the Applicant is on medication with minimum improvement. The Applicant in his affidavit undertakes not to interfere with investigations or State witnesses. His undertaking in this regard is strengthened by the fact that he has been already committed for trial which signifies a fact that investigations are completed and the State's readiness to prosecute the case.

The Applicant avers that he is married with one child and six dependents who are under his custody and care and he is the sole breadwinner for his family. He has presented sureties, whom he avers guarantee to ensure his return to answer the charges, namely;-

1. Ogwen Michael aged 39 years. Businessman, Director of Lango Distillers Investment Company Ltd. Holder of Voter Card No. 02124142. Phone No. 078-888554. Close family friend and neighbour since childhood. Resident of Angwetangwet parish, Adekokwok Sub-county, Erute South, Lira District.
2. Adisiyo David aged 47 years, Teacher, Lira Town College, Holder of Voters Card No. 05363583, Phone no 0778926454. neighbour to the Applicant, Resident of Barlwala, Boke Parish, Adekokwok, Erute South, Lira District.
3. Ekol Franco, aged 41 years, Director Economic Social Partnership Co. Ltd. Holder of Voters Card No, 12826827, Phone 0772358854, family friend and

neighbour, Resident of Barlwala, Boke Parish , Adekokwok Sub-county, Erute South, Lira District.

4. Enyang Joel, aged 38 years, Pharmacy attendant, Lira Regional Referral Hospital. Holder of Voters Card No. 02124568, Phone No. 0772473544. Cousin brother of the Applicant, Resident of Barlwala, Boke Parish, Adekokwok Sub-county, Erute South, Lira District.

Counsel for the Respondent found the sureties and I agree with him, substantial as they are closely related to the Applicant and residents of Adekokwok sub-county, Erute South, Lira District where the Applicant also resides. He however opposed the application on the ground that the State is ready to proceed with the prosecution of the case and that in view of the seriousness of the offence the likelihood of absconding is high. However in Attorney General vs Tumushabe (2008) 2EA 26 Mulenga JSC, with the concurrence of the other members of the Supreme Court, stated:

“ It is clear to me that Clause 6 of Article 23 applies to every person waiting trial for criminal offence without exception under paragraph (a) of that clause, every such person at any time, upon or after being charged, may apply for release on bail, and the court may at its discretion, grant the application irrespective to the class of criminal offence, for which the person is charged.”

I have also taken note of the applicants undisrupted or non-rebutted averments on oath that he was arrested on 13th July 2011 and unlawfully detained by the

military and tortured before he was produced in court on the 1st day of August 2011.

In conclusion, I have considered the law and the authorities cited to me and the submissions of both counsel. I have consciously considered the gravity and seriousness of the offence charged and the effects of the offence on national security. I have also considered the applicants fundamental right to liberty, the applicants' mitigating factors and the period the applicant spent in custody before his production in court and the period he has spent on remand as well as his medical condition. Considering all the above the applicant is granted bail on the following conditions:-

1. The Applicant is to deposit in court the sum of shs 8,000,000/= (Eight million shillings only)
2. The Applicants above named sureties are hereby approved and each is to execute a bond in the sum of shs 10,000,000/= (Ten million shillings) NOT CASH.
3. The Applicant is to deposit his Certificate of Title or other documents of ownership of his land and developments at Lira Municipality and passport No. BO853945 in the custody of the Deputy Registrar Criminal Division.
4. The Applicant is not to move out of the Local limits of Lira Municipality without permission of the Registrar Lira High Court circuit until ordered otherwise by the humble court.

5. The Applicant is to report to the District Police Commander Lira Police Station every Monday of the week.
6. The Applicant is to report to the Deputy Registrar Criminal Division every 3rd day of the Calendar month with effect from 3rd August 2012.

In default of any of the above conditions the Applicant is to keep on remand.

Copy of this order is to be served on the Registrar, Lira High Court Circuit and the District Police Commander, Lira Police Station for its implementation.

Lameck N. Mukasa
Judge
3/07/2012