

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA
HOLDEN AT KAMPALA
HCT-00CR-CM-0042-2012**

JOHN KAJAANA.....APPLICANT

VERSUS

UGANDA.....RESPONDENT

BEFORE: THE HON. JUSTICE LAMECK N. MUKASA

REPRESENTATION:

Mr. Duncan Sebalu- holding brief for Mr. John Mary Mwaya counsel for Applicant.

Mr. Muwonge Emmanuel Senior State Attorney for State

Court clerk:

Mr. Kutosi Charles

RULING:

The Applicant, John Kajaana, was on 14th February, 2012 charged before the Makindye Chief Magistrate Court for Aggravated Defilement contrary to section 129(3) & (4)(a) of the Penal Code Act. He was on 24th May 2012 committed to this Honorable Court for trial. Particulars of the offence are that the Applicant on 28th January, 2012 performed a sexual act with Nagadya Harriet a girl aged 13 years while he was infected with HIV/AIDS. The Applicant now applies for bail pending trial under Article 23(6) and 139 of the Constitution and section 14 of the Trail on Indictment Act. The Application is supported by an affidavit sworn by the Applicant.

Article 28(3)(a) of the Constitution presumes every person charged with a criminal offence innocent until proved or pleads guilty. Under article 23(1) of the Constitution every person has a fundamental right to liberty which can only be deprived in the exceptional circumstances provided therein. To preserve this right to liberty and 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. In exercise of its discretion court has to consider whether there is a justification to interfere with the Accused's right to liberty pending his/her trial. Court must be satisfied that in the circumstances of the particular case the Accused person will turn up to answer the charge at the trial and whenever he is required by court. So the need to be conscious of the likelihood to abscond and/or to interfere with the investigations, witnesses and /or evidence. In this regard court has to weigh the gravity of the offence charged and the severity of the attendant sentence for the charge. The more serious the offence, the higher the temptation for the accused to be abscond when released on bail.

In the instant case the applicant is charged with aggravated defilement contrary to section 129(3) and (4)(a) of the Penal Code, a serious offence whose maximum sentence is death on conviction. In such serious offences court has to consider the existence of exceptional circumstances and factors set out in section 15 of the Trial on Indictment Act.

Article 15 of the Trial on Indictment Act provides that court may refuse to grant bail to a person accused of an offence specified in subsection(2) of the section, if the Applicant does not prove to the satisfaction of court that:-

- (a) exceptional circumstances exist justifying his or her release on bail, and
- (b) he or she will not abscond when released on bail.

The section defines “exceptional circumstances” to mean any of the following:

- (a) Gave illness certified by a medical officer of the prison or other institution or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody.
- (b) A certificate of no objection signed by the Director of Public Prosecutions or
- (c) The infancy or advanced age of the accused

No evidence has been adduced of any exceptional circumstance.

The factors to consider in the exercise of courts discretion are:

- Whether the applicant has a fixed place of abode in Uganda.
- Whether the Applicant has sound sureties within Uganda to undertake that the applicant shall comply with the conditions of his or her bail.
- Whether the Applicant has not on previous occasion when released on bail failed to comply with the conditions of his or her bail.
- Whether there are other charges pending against the Applicant.
- Whether the Applicant has no record of any previous convictions.

- Whether the Applicant has not evinced any likelihood of committing an offence when released on bail.

See: Col. (Rtd) Dr. Kiiza Besigye vs Uganda HCS in Appl No. 228 & 229 of 2005.
Section 15(4) of Trial on Indictment Act.

In his affidavit the applicant avers that he has a fixed place of abode within Uganda and that he is not likely to abscond when granted bail. That is not sufficient. He does not state where the place of abode is and he has not adduced any evidence to show that he has a fixed place of abode. Renting tenants have tendencies of moving from one place of residence to another it very difficult to trace such people.

The Applicant avers that he has substantial sureties. He presented Ms. Ntedde Cissy stated to be his paternal aunt of Mudduma, Mpigi District and Augustus Sebowo stated to be of Kazinga Nabweru Wakiso District and a friend. Though counsel for the state found them substantial, I am of a contrary view. In the charge sheet the Applicant is described to be a resident of Nsambya Gogonya Zone, Makindye Division, Kampala District. With the said sureties' respective residence far apart from that of the Applicant they might find it different to ensure his attendance to court whenever required.

Considering all the above I am unable to exercise this court's discretion in favour of the Application. His application for bail is rejected and dismissed.

Lameck N. Mukasa
Judge
3/07/2012