

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT KAMPALA
HCT-00-CR-CM-0045-2012

MAYANJA FRANK.....ACCUSED

VERSUS

UGANDA.....PROSECUTION

BEFORE: THE HON. JUSTICE LAMECK N. MUKASA

RULING:

This is an application for bail brought under section 14 of the Trial on Indictment Act, Section 33 of Judicature Act and Article 23(3)(a) of the Constitution. The Applicant was charged and remanded on 16th April 2012 and the committal papers served upon the Applicant show that he was committed to this honorable Court on 11th July 2012. On the Indictment the Applicant is indicted with Aggravated defilement contrary to sections 129(4) (b) of the Penal Code. The particulars are that the Applicant is that the Applicant on 3rd April 2012 performed sexual intercourse with Namata Proscovia age 14 years while he was HIV positive.

The Applicant is not before me for trial but for an application for bail. Article 28(3)(a) of the constitution presumes every person who is charged with a criminal offence to be innocent until proven guilty or until the person has pleaded guilty. Article 23(1) of the Constitution provides that no person shall be deprived of personal liberty except in any of the cases provided therein. The grant of bail is an important judicial instrument for ensuring

that the presumption of innocence and the fundamental right to liberty and free movement.

However in exercising its discretion to grant or not grant bail 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. The Application is supported by an affidavit deposed to by the Applicant. He thereon avers that he has a permanent place of abode at Kinawa, Munawa zone, Nsangi sub-county, Wakiso district where he lives with his family. He has adduced an agreement upon which he brought the land where he resides. Further that he was working with Kidawaline bakery, a father of three children who depend on him. He has presented two people, a friend and a relative ready to stand sureties for him and to undertake that they ensure that he attends court whenever required.

Mr. Muwonge, Senior State Attorney, found the sureties substantial and I agree with him. Counsel did not oppose his bail application but sought for stringent bail conditions to ensure that the Applicant turns up for trial.

The Applicant is charged with a serious offence which carries a maximum sentence of death on conviction. The more serious the offence, the higher the temptation for an accused to abscond when released on bail. Thus the need for court to be more cautious. In this regard court is guided by section 15 of the Trial on Indictment Act which sets down exceptional circumstances and factors to take into considerations. In the instant application no exceptional, no exceptional circumstances have been shown. Further the applicant was charged and remanded on 16th April 2012 for an

offence alleged committed on 3rd April 2012. He has been committed to the High court therefore ready for trial.

Considering the seriousness of the offence and gravity of the punishment if found guilty and the other factors considered above, I am unable to grant the Applicant bail. His application fails and is dismissed.

Lameck N. Mukasa

Judge

3/08/2012