

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA

AT SOROTI

CRIMINAL APPLICATION NO. 005 OF 2011

(Arising from Criminal Case No. 178 of 2011)

IGIRA TOMAPPLICANT

VERSUS

UGANDA.....RESPONDENT

BEFORE: HON. LADY JUSTICE MARGARET C. OUMO OGULI.

RULING

This is a ruling in an application for bail brought under Article 2(1), 23(6) (a) and 28 (1) & (3) of the Constitution of Uganda 1995 and section 14(1) of the Trial on Indictment Act Cap. 23.

The application is supported by an affidavit of IGIRA TOM who is the accused in Criminal Case No. 178/2011.

The application was represented by Isodo Sam while state was represented by Kaiza Abdallah. A state Attorney representing the Director of Public Prosecutions.

In support of the application, Mr. Isodo submitted that the applicant has been in custody since March 28th 2011 at Soroti Government Prison confinement which

has stayed all proceedings in his life especially that he can't get back to school in Adacar Vocational Training Institute.

That under Section 14 of the Trial or Indictment act CAP 23 and the articles of the constitution which he cited; the accused person may be released on bail pending trial. That the applicant if released on bail has a fixed place of abode at Ajera village Obule Parish Asuret Sub County in Soroti district.

That this Court held in a similar application involving Olupot Versus Uganda Misc. Application No. 9/2011 that the overriding factor in such cases is whether the applicant will turn up for trial.

Counsel for the applicant produced one surety, in the names of Mr. Akora Moses an uncle to the applicant aged 49 years old, a farmer and a resident of Obule Parish, Asuret Sub County, Soroti district. Counsel submitted that this surety will make sure the applicant turns up for trial.

That S.14 of the TIA allows this court to release the applicant on bail with or without sureties.

In reply, the learned state Attorney objected to the application for bail basing on section 15 which specifically requires the applicant to prove exceptional circumstances before bail is granted. That the applicant has not satisfied the exceptional circumstances in Section 15 (3) of the Trial on indictment Act.

That the accused person is neither an infant or of advanced age. So the accused has not satisfied any of the exceptional circumstances.

That the applicant has not satisfied court that he has a fixed place of abode as he does not have a home or family which will always persuade the accused not to abscond. That one surety should not be rendered enough by this court. The learned state Attorney on the above grounds that this honourable court denies the applicant bail.

In rejoinder Counsel Isodo for the applicant submitted that his client should be considered innocent as he had not yet pleaded under section 14 of the TIA and not Section 15.

That the applicant has a fixed place of abode at Ajera village, Obule Parish, Asuret Sub County, Soroti District within the Jurisdiction of this court. That section 14 under which Counsel is bringing the application does not require special circumstances. Mr. Isodo reiterated his prayer for bail.

It is a presumption of law that an accused person is presumed to be innocent until proved guilty by a competent court and or until such accused pleads guilty to the charge voluntarily. This presumption is enshrined in Article 28 (3) (a) of the constitution. In the same Constitution, it is provided under Article 23 (1) () and (c) that no person shall be deprived of his personal liberty except () in execution of the

order of a court made to secure the fulfillment of any obligation imposed on that person by law, and, (c) for the purpose of bringing that person before court in execution of the order of a court or upon reasonable suspicion that the person has committed or is about to commit a criminal offence under the law of Uganda.

Bail is granted to an accused person to ensure that he appears to stand trial without the necessity of his being detained in custody in the meantime. The effect of bail is merely to release the accused from physical custody but he is still under the jurisdiction of the law and is bound to appear at the appointed time and place.

Both section 14 and 15 of the Trial on indictment Act use the word “May” which means that the court is given or left with the discretion to grant or refuse bail. (see constitutional Reference No. 20/2005 Uganda versus Col. (*Retired Kizza Besigye*)).

It must always be borne in mind that where any legislation confers upon the court the discretion to do or refrain from doing, grant or refuse to grant a relief, prayed for, such discretion must be exercised without any malice, it will, ulterior motives or regard to external influence or circumstances.

In consideration to the fact that the accused person is a student and can be a useful person to society over with the charge hanging on him.

I am fully satisfied that this is a proper case where the court can exercise its discretion and release the applicant on bail under the following terms:-

- (a). The applicant will execute a non cash bond of shs 2,000,000/=
- (b). The surety will also execute a similar bail bond.
- (c). The applicant must report to the Deputy Registrar of High Court of

Soroti twice a month, that is the beginning and at the end of the month beginning on 1st March, 2012 until the disposal of the case, or until directed otherwise.

Hon. Lady Justice Margaret C. Oguli Oumo,

JUDGE.

13/2/2012.

Present:

1. Mr. Isodo.
2. Keyuza.
3. Applicant
4. Faith Nyamenge Research Assistant.
5. Ecutu Robert Clerk.