

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT MBARARA**  
**MISCELLANEOUS CRIMINAL APPLICATION No. 100 OF 2019**  
**(Arising from H.C Cr. Case. No. 069 of 2018)**

**KABUSHENGA JACKSON alias SODA :::::::::::::::::::::::::::::::::::APPLICANT**

**VERSUS**

**UGANDA:::RESPONDENT**

**BEFORE: HON JUSTICE SSEKAANA MUSA**

**RULING**

This is an application for bail pending trial of the applicant who is charged with the offence of murder contrary to sections 188 and 189 of the Penal Code Act Cap 120. The applicant is alleged to have murdered Murari Gideon alias Godo on the 19<sup>th</sup> day of May 2018 at Kyabwemi Cell Isingiro District.

This application is supported by the affidavit of the applicant premised on the following grounds;

1. It is the applicants constitutional right to be released on bail on the discretion of court.
2. The applicant has a fixed place of abode within the jurisdiction of this court.
3. The applicant has sound sureties who will ensure that he abide by the conditions of bail set by this honorable court.
4. It is just and equitable that the applicant should be released on bail.

The state did not file an affidavit in reply to the application however orally opposed the application and prayed that the same be dismissed.

Persons accused of criminal offences have a right to apply for bail as per Article 23 (6) (a) and 28 (3) of the Constitution of the Republic of Uganda however the power to grant or not grant bail is entirely within the discretion of court, which discretion ought to be exercised judicially.

The primary purpose of bail should be to ensure that the applicant appears to stand trial without the necessity of being detained in custody during the period of trial. One of the main concerns to the court in all bail applications is that the accused will not abscond when released on bail. It is important therefore that the applicant confirms his fixed place of abode and presents sound sureties who will ensure his attendance in court, and who can be called upon in the event he absconds.

Even though the applicant states that he has a fixed place of abode within the jurisdiction of court and has presented sound sureties, this court is hesitant to grant bail.

The applicant is being charged with the grave offence of murder which carries a maximum sentence of death. Furthermore; according to the summary of the case after the deceased's murder, the applicant disappeared from the area and was arrested from Kisaasi college where he been sent by his mother to attend school.

In *Hurnam v. State of Mauritius* [2006] 1 WLR 857, PC, it was held that;

*A person charged with a serious offence, facing a severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drugs cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail, but they do not do so of themselves, without more. They are factors relevant to the judgment whether, in all the circumstances, it is necessary to deprive the applicant of his liberty. Whether or not that is the conclusion reached, clear and explicit reasons should be given.*

The fact that the accused attempted to escape justice before he was formally charged shows this court that he is likely to jump bail if released.

In the result, I find that the applicant has not offered safeguards sufficient to overcome the concerns which the court has expressed about granting him bail.

Bail is therefore denied.

The application is accordingly dismissed.

I so order.

**SSEKAANA MUSA**

**JUDGE**

**24<sup>th</sup> January 2020**