

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT MBARARA
MISCELLANEOUS CRIMINAL APPLICATION No. 102 OF 2019

(Arising from H.C Cr. Case. No. 026 of 2016)

MUJUNI BENARD:.....APPLICANT

VERSUS

UGANDA:.....RESPONDENT

BEFORE: HON JUSTICE SSEKAANA MUSA

RULING

This is an application for bail pending trial of the applicant who is remanded at Kakiika Prison charged with the offence of murder contrary to sections 188 and 189 of the Penal Code Act Cap 120. It is alleged that the applicant and a one Ndyabahika Innocent on the night of 7th – 8th April 2016 at Kibingo core PTC in Mbarara district murdered Bebwa Nathan.

The grounds of this application are that;

1. That the applicant is suspected to have committed the offence of murder C/S 188 and 189 of the Penal Code Act and is therefore presumed to be innocent.
2. That it is a constitutional right of the applicant to apply for bail before this honourable court.
3. That the offence with which the applicant is charged is bailable by this honourable court.
4. That the applicant was on the 24th day of October 2016 committed to high court.
5. That the applicant will not abscond from attending court once he is released on bail in since he has a fixed place of abode in Ntsingwa II

Cell, Kibingo Parish, Bugamba Sub-county Rwampara County, Mbarara District within the jurisdiction of this Honorable Court.

6. That the applicant has substantial sureties ready to guarantee his return for trial once released on bail.
7. That it is fair, reasonable and in the interest of justice that this application be granted.

The respondent objected to the application on grounds that the applicant is indicted of an offence which is grave in nature and prayed that the same be dismissed.

At the hearing the applicant was represented by Bruno Muhanguzi whereas the respondent was represented by Amy Grace.

The applicant presented two sureties at the hearing;

1. Muzoori Jafari aged 51 years, farmer, resident of Rwamuganga, Kibingo parish, a paternal grandfather to the applicant.
2. Byanyima Johnbosco aged 38 years, a famer, resident of Ntsigwa cell Kibingo Rwampara a biological brother of the applicant.

It has been set out in many cases that, the right to apply for bail is a constitutional right and is open to all categories accused person irrespective of the nature of the offence for which they are charged. Consider for example the case of **His Majesty Omusinga Mumbere Wesley Vrs. Uganda [Crim. Misc Application No. 75/2016]** and **Okello Augustine Vrs. Uganda [Cr. Misc. Application No. 06/2012]**.

This applicant is therefore entitled to apply for bail. However, as state pointed out, for a grave offence like murder, the Court should consider the fear of conviction which attracts a maximum sentence of death. Release on bail of such a serious offence would make it attractive for one consider absconding.

The constitutional principle of presumption of innocence and the right to apply for bail are of paramount interest to this Court. This applicant has

been on remand for 3 years. The applicant has a permanent fixed place of abode and has presented this court with substantive sureties one of whom is his brother and the other is his grandfather who are both within his locality. The state did not vehemently object to the grant of this application.

The sureties appear to be responsible persons who will ensure the accused returns to Court to stand trial, and in view of the presumption of innocence as provided under **Article 28(3)** of the Constitution of the Republic of Uganda, 1995.

In the exercise of discretion, this court is satisfied that the applicant will attend court once granted bail. Due the gravity of the offence and there is high possibility of the applicant jumping bail.

There is unexplained circumstances surrounding the death of his colleague at work with whom he was the last person to be seen with.

I decline to grant bail to the applicant. The application is dismissed

I so order.

SSEKAANA MUSA
JUDGE

24th January 2020