

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT MBARARA

HCT-05-CR-MA 57/2019

COURT CASE NO. MBR-CR-AA-56/2017

TUMWEKWASE OWEN:..... APPLICANT

VERSUS

UGANDA:..... RESPONDENT

BEFORE: HON JUSTICE SSEKAANA MUSA

RULING

This is an application for bail pending trial. The applicant is indicted for the offence of **Murder c/s 188 and 189** and **Aggravated Robbery c/s 285 and 286(2) of the Penal Code Act**.

The applicant is a male adult Ugandan aged 21 years, a shop attendant and a resident of kyamugorani cell, Kakiika division of Mbarara Municipality. It is alleged that on the 29th of March 2017, the applicant and others at Kakiika cell in Mbarara District robbed Bwengye Naume of cash two million shillings (UGX. 2,000,000) and two mobile phones and at or immediately after the said robbery caused the death of the said Naume Bwengye.

This application is premised on the following grounds;

1. The applicant fronts his innocence of wrong doing.
2. The applicant has no previous criminal record and there are no other pending charges against him.
3. The applicant has a fixed place of abode at Kyamugorani cell, Kaaika Division Mbarara District within the jurisdiction of High court and is willinh to abide by any bail conditions that may be imposed upon him by this honourable court and will not abscond.

4. The applicant has substantial sureties all residents within the jurisdiction of this honourable court who will be produced on the hearing of this application.

The applicant filed an affidavit in support of the application.

The applicant brought two sureties; Frank Tibingana from Kaaya village, the father to the applicant, a cultivator, aged 55 years as well as Silvano Mpirirwe, a friend to the applicant aged 42 years, a cultivator from Kaaya village, Bugamba Sub county, Mbarara District. He also provided his mobile phone contacts. Both sureties provided copies of their National identity cards.

The respondent opposed the application on ground of the nature of offence the applicant is indicted of in which it stated that his level of participation in the offence is higher and that his co-accused were convicted of the same. Counsel for the respondent prayed that bail is denied.

At the hearing the applicant was represented by Sam Dhabangi while the state was represented by Amy Grace.

According to Article 23 (6) (a) and 28 (3) of the Constitution of the Republic of Uganda, persons accused of criminal offences have a right to apply for bail. However, the grant of bail is discretionary to the court (see *Uganda Vs Kiiza Besigye; Const. Ref No. 20 OF 2005*).

In the determination whether or not the applicant is likely to abscond and not turn up for trial is the question, whether he has a fixed place of abode within the jurisdiction of this court.

This court is satisfied that applicant has a permanent residence, there are substantial sureties to stand for him and there is no credible evidence that once released on bail, he will interfere with the investigations of the case. There are also no other criminal charges pending against the applicant.

However the applicant is charged with a very grave offence in respect of which the law stipulates that in order to be released on bail, the applicant must prove to the satisfaction of court an exceptional circumstance (see **section 15(3) of the Trial on Indictments Act, Florence Byabazaire vs Uganda High Court Miscellaneous Application Number 284 of 2006**. The applicant has not proved any exceptional circumstance in this application.

This court, of course, has in the exercise of its overall jurisdiction, powers to grant bail, even in absence of an exceptional circumstance being proved. Court does so through the judicial exercise of its discretion. The test this court has set is that: *"The burden is upon the applicant to satisfy court by putting forth before court a set of facts, beyond the ordinary considerations for bail, upon which the court can act, in the exercise of its discretion, to admit the applicant to bail"*(See: *High Court of Uganda at Gulu Miscellaneous Application Number 0037 of 2008: Bongomin Richard Akal vs Uganda, unreported*).

On the basis of the evidence put forward, court is not satisfied that this is a case where it should exercise its discretion to grant bail to the applicant. Since the co-accused was convicted, any exercise of discretion to release the applicant may become very tempting for the accused to jump bail.

Bail is denied.

The application is accordingly dismissed.

I so order.

SSEKAANA MUSA
JUDGE
24th January 2020