

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MBARARA
HCT-05-CV-MA NO. 94 OF 2019
[ARISING OUT OF CRIMINAL CASE NO. AA-012/2019, MBARARA CO-180/2019, CRB-4051/2018]

TUMWIRUKIRIRE GRACE=====APPLICANT/ACCUSED
VERSUS
UGANDA=====RESPONDENT/PROSECUTOR

BEFORE HON. JUSTICE SSEKANA MUSA
RULING

This application is brought by way of Notice of Motion under **Article 23 (6) (a) of the Constitution, S. 14 (1) of the Trial on Indictments Act and rule 2 of the Judicature (Criminal Procedure) (Applications) Rules S.I. 13-8.**

This is an application pending trial where in the applicant is indicted for the Murder of her late husband Mubangizi Benjamin. The Applicant was represented by Nuwagaba Collins while Izikuru Gloria-Asst DPP appeared for the state.

The grounds of the application as presented and supported by the affidavit of the applicant are as follows;

1. That the Applicant denies having committed the alleged offence and I have not pleaded guilty and I am still presumed innocent.
2. That the Applicant will not abscond once released on bail.
3. That the Applicant has a permanent place of abode at Kabanyoro Cell, Nyakibungo Parish, Rugando Sub-County, now Rwampara District where I have a family.
4. That the Applicant has substantial sureties who are prepared to guarantee any return for trial.
5. That it is fair, reasonable and in the interest of Justice that the application be granted in so far as in the event of acquittal the Applicant will never be compensated for the suffering I will have gone through while in detention.

Counsel for the Applicant contended that indeed there no exceptional circumstances but the accused will not abscond as she has a fixed place of aboard and sound sureties. That the fixed place of abode is located at Kabanyoro Cell, Nyakibungo Parish, Rugando Sub-County, now Rwampara District, the matrimonial home where the Applicant has family.

As for the sureties, the applicant , through duly signed letters from the Chairperson L.C 1, a one Nshekanabo Christopher, a resident of Kimuli Cell, Vice Chairperson and paternal uncle to the Applicant. Secondly, a one James Magara, resident of Kimuli Cell and a brother to the Applicant. Lastly, a one Kenneth Kaunda, a resident of Kacence

West Cell, Kakiika Division, cousin to the Applicant and a teacher at Ken Vocational Institute.

On the other hand, the state argued that there is no evidence that the Applicant will go back to her alleged place of abode as it was the matrimonial home with Mubangizi Benjamin who was the husband, allegedly murdered by the Applicant. That the first two sureties live in another area, Kamuli Cell, while the 3rd being a teacher cannot have effective control over the Applicant. Further that considering that the offence of murder is grave and there is overwhelming evidence to convict the Applicant, it would be highly tempting for her to jump bail.

Having listened to the arguments of both parties and in consideration of the evidence provided there to, I have come to the following conclusion;

The legal essence behind bail is in respect to upholding one's right to personal liberty. This is especially the product of the presumption of innocence as protected under Article 28 (3) of the Constitution of the Republic of Uganda.

A bail applicant must not be deprived of his/her freedom unnecessarily or as merely punishment where they have not been proved guilty by a competent court of law. This principle of protection of personal liberty was further cemented in the case of **Col (Rtd) Dr. Kizza Besigye v Uganda Criminal Application No.83 of 2016** wherein Hon. Justice Masalu Musene was of the holding that "...court has to consider and balance the rights of the individual, particularly with regard personal liberty..." And further quoting the famous words of Hon. Justice Ogoola PJ (as he then was) in **Criminal Misc. Application No. 228 of 2005 and Criminal Misc. Application No. 229 of 2005** wherein the learned Justice had this to say:

"Liberty is the very essence of freedom and democracy. In our constitutional matrix here in Uganda, liberty looms large. The liberty of one is the liberty of all. The liberty of one must never be curtailed lightly, wantonly or even worse arbitrarily. Article 23, clause 6 of the Constitution grants a person who is deprived of his or her liberty the right to apply to a competent court of law for grant of bail. The Court's from which such a person seeks refuge or solace should be extremely wary of sending such a person away empty handed- except of course for a good cause. Ours are courts of Justice. Ours is the duty and privilege to jealously and courageously guard and defend the rights of all in spite of all."

This was further confirmed by Hon. Justice Stephen Mubiru in the case of **Abindi Ronald and Anor v Uganda Miscellaneous Criminal Application No. 0020 of 2016** stating that;

"Under Article 28 (3) of the Constitution of the Republic of Uganda, every person is presumed innocent until proved guilty or pleads guilty. Consequently, an accused person should not be kept on remand unnecessarily before trial."

The Court's discretionary powers to grant bail are enshrined under Section 14 (1) of the Trial on Indictments Act and the conditions under which bail is to be granted under Section 15. These circumstances are broken down to proof of exceptional circumstances like grave illness, a Certificate of no objection from the Director of Public Prosecution,

infancy or advanced age; and the fact that the accused will not abscond to be proved by the accused having a fixed place of abode, sound sureties, among others. However it is trite law that proof of exceptional circumstances is not mandatory as courts have the discretion to grant bail even where none is proved.

Hon. Justice Stephen Mubiru in the earlier quoted case of *Abindi Ronald and Anor v Uganda* was of the view that “An applicant should not be incarcerated if he has a fixed place of abode, has sound sureties capable of guaranteeing that he will comply with the conditions of his or her bail.”

In the instant case I find that the Applicant has provided substantial sureties in three outstanding sureties especially as they are close kin who have the ability to compel the Applicant to comply. I do not agree with learned Counsel for the state that being relatives and one a teacher will hinder the Applicant’s compliance. “If the courts are simply to act on allegations, fears or suspicions, then the sky would be the limit and one can envisage no occasion when bail would be granted whenever such allegations are made”; *Panju v Republic* [1973] E.A 282.

To put this in more legal context recourse will be had to the case of **Mugisha Ronald V Uganda HCT- 01-CR-CM-NO-050 of 2018** where in His Lordship Wilson Masalu Musene was of the view that;

“Since the sureties appear responsible persons who will ensure the accused returns to court to stand trial, and in view of the presumption of innocence under Article 28 (3) of the Constitution of the Republic of Uganda, 1995, I find and hold that this is a fit and proper case to grant bail to the Applicant.”

In the same spirit of the above arguments and authorities I find and hold that the application is allowed and bail hereby granted on the following conditions:

1. The applicant shall deposit a sum of 3,000,000/- cash.
2. Each of the three sureties is also to be bound in the sums of UGX 10,000,000/- also not cash.
3. The applicant will be reporting to the registrar of the criminal division once every month from the date of this ruling.

SSEKANA MUSA

JUDGE

24th January 2020