

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

HCT-05-00-CR-MISC. APPL NO. 123 2019

(Arising from MBR-00-CR-AA-01/2019)

ASIIMWE DIDAS alias HAJJI:.....: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 of the *Penal Code Act***.

The applicant is a male adult Ugandan, a resident of Nakasero cell, Rubindi Sub County in Mbarara district. It is alleged that on the 8th of January 2019, the applicant and others still at large at Rubindi Town in Mbarara Kyapotani District killed No. 38172 Police Constable Bwasirini Stanley.

This application is premised on the following grounds that;

1. The applicant has neither pleaded guilty nor been proved guilty of the offence and denies having committed the alleged offence.
2. The applicant has a permanent place of abode at Nakasero cell, Rubindi Subcounty, Mbarara District within the jurisdiction of High court.
3. The applicant has substantial sureties ready to guarantee his return for trial.
4. That it is only fair, reasonable and in the interest of justice that this application is granted as the applicant will never be compensated for the suffering he would have gone through in the event of an acquittal.

The applicant filed an affidavit in support of the application.

The applicant brought three sureties; Kibamuhaire Maria Fururigensia from Nakasero village, the mother to the applicant, aged 69 years as well as Tumusiime Julius, a resident of Nakasero village aged 48 years and Tumusiime Nicholas Rauben, a resident of Nakasero village. All sureties provided copies of their National identity cards as well as their mobile phone contacts.

The respondent opposed the application on the ground of the gravity of the offence. Counsel for the respondent prayed that bail is denied.

At the hearing the applicant was represented by Geoffrey Batwatanise 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*).

This court is satisfied that the applicant has a permanent residence, there are substantial sureties to stand for the applicant 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. The circumstances surrounding the murder are so serious and involved a police officer who could have died in execution of constitutional mandate of keeping law and order.

Bail is denied.

The application is accordingly dismissed.

I so order.

SSEKAANA MUSA

JUDGE

24th January 2020