

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
MISCELLANEOUS CRIMINAL APPLICATION No. 79 OF 2019
(Arising from H.C Cr. Case. No. 079 of 2018)

1. ATWIJUKYIRE MIRIA

2. KABWENGYERE DARIAS:::APPLICANTS

VERSUS

UGANDA:::RESPONDENT

BEFORE: HON JUSTICE SSEKAANA MUSA

RULING

This is an application for bail pending trial of the applicants who are charged with the offence of Murder contrary to sections 188 and 189 of the Penal Code Act Cap 120. The applicants are alleged to have murdered Agaba Johnson alias Kabeere on the 13th day of November 2018 at Nyakibigi cell Ntungamo District.

Grounds of this application

1. The applicants have been charged with the offence of murder C/S 188 and 189 of the Penal Code Act but they have neither pleaded guilty nor been proven guilty and are still presumed to be innocent until the contrary is proved.
2. That the applicants have a permanent place of abode at Nyakibigi Cell Kahunga Ward, Western Division in Ntungamo District within the jurisdiction of this Honorable Court.
3. That the applicants have substantial sureties who are ready to guarantee their return for trial.

4. The applicants have been on remand for over 9 months now.
5. That it is just fair, reasonable and in the interest of justice that this application be granted in so far as in the event of acquittal the applicants will never be compensated for the suffering they will have gone through while in detention.

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.

It is trite law 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 without trial. In well deserving cases the accused person should be granted bail if he or she fulfils the conditions for his or her release.

An Applicant should not be incarcerated if he or she is unlikely to abscond or interfere with witnesses for the prosecution, has a fixed place of abode, has sound sureties capable of guaranteeing that he or she will comply with the conditions of his or her bail and is willing to abide by all other conditions set by the court.

However, the grant of bail is discretionary to the court (*see Uganda Vs Kiiza Besigye; Const. Ref No. 20 OF 2005*). Whether or not the court is inclined to exercise the discretion whether to grant or not grant bail is a matter depending on circumstances of each particular case to be weighed on individual merits or demerits of the case. It is established that release on bail is not automatic. Whether or not to release the accused on bail is a preserve of the discretion of court.

In this case, the applicants are siblings who have been charged with a capital offence of murder. The applicant state in their respective affidavits that they have a fixed place of abode and both presented two sureties.

However in the circumstances surrounding the alleged offence, the court is hesitant to grant bail to the applicants. According to the summary of case, the alleged offence was a result family land wrangles. Releasing the applicants on bail could re-ignite the land wrangles in the family considering that the family already lost one of the family members.

I am of the considered opinion at this stage that it is not in the best interest of the administration of justice to release the applicants on bail. Release of the applicants at this point in time will endanger their own lives as well as that of other members of their family.

Bail is denied.

I so order.

SSEKAANA MUSA
JUDGE
24th January 2020