

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT MBARARA
CRIMINAL MISCELLANEOUS APPLICATION No. 70 OF 2019
(Arising from H.C Cr. Case. No. NTU-OO-CR-AA-07 of 2018)

BESESYA FRANSCIS alia KATETA:::::::::::::::::::::APPLICANT/ ACCUSED

VERSUS

UGANDA:::RESPONDENT/PROSECUTOR

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 Kabagyenda cell, Kikoni Ward, Central division of Ntungamo Municipality. It is alleged that on the 23rd January 2018, the applicant allegedly killed his wife, Ntegyerize Judith using a panga.

This application is premised on the following grounds;

1. The applicant states that he is innocent of wrong doing and there are no other pending charges against him.
2. The applicant has a fixed place of abode at Kyabagyenda Cell, Kikoni Ward, Central Division, Ntungamo Municipality, Ntungamo District within the jurisdiction of High court and is willing to abide by any bail conditions that may be imposed upon him by this honourable court and will not abscond.
3. 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 presented two sureties; Kato Denzi from Nyakafunjo village, Itereero, Ntungamo district, a cousin, aged 56 years as well as Kamugisha Serenzio, a cousin to the applicant aged 57 years, from Nyakafunjo village, Itereero, Ntungamo district. Both sureties provided copies of their National identity cards as well as their mobile phone contacts.

At the hearing the applicant was represented by Bridget Nasasira holding brief for Barenkesi Franco 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 summary of the case put forward, court is not satisfied that this is a case where it should exercise its discretion to grant bail to the applicant. The children who are likely to be witnesses may be influenced not to testify or will be traumatised to see the applicant out of prison before the trial.

Bail is denied.

The application is accordingly dismissed.

I so order.

SSEKAANA MUSA
JUDGE
24th January 2020