THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

CRIMINAL MISCELLANEOUS APPLICATION NO. 29 OF 2022

(ARISING FROM CRIMINAL CASE NO. AA 04/2022, POLICE CASE NO. AMURU CRB 40/2022 DPP CASE NO. CO 078-2022)

KOMAKECH GEOFFREY.....APPLICANT

VERSUS

UGANDA.....RESPONDENT

BEFORE: HON. MR. JUSTICE GEORGE OKELLO

RULING

The applicant applies to be released on bail, pending trial on charge of rape, contrary to section 123 of the Penal Code Act, Cap. 120. The Application is brought under article 23 (6) (a) of the Constitution of Uganda, 1995, section 33 of the Judicature Act, sections 14 and 15 of the Trial on Indictments Act, Cap.23 and Rules 2 and 4 of the Judicature (Criminal Procedure) (Application) Rules, S.1 13-8. The Applicant grounds his application on alleged ill-health; on having a fixed place of abode; on being bread winner; on having substantial sureties; and in the interest of justice. These are highlighted in his affidavit.

The application was resisted by the State, by affidavit of a one No. 56555 D/C Ogweng Robert, on the basis that the offence the applicant and his co-accused are facing are serious and the likelihood of jumping bail is high; the applicant's relatives are currently interfering with the victim, convincing the victim to withdraw the charge against the applicant, thus a likelihood of intensified interference if released on bail. It is averred that no exceptional circumstances exist, and that the applicant is not suffering from any grave illness, not capable of being treated while in prison custody; that no introduction letter from the LC1 Chairperson of the area where the applicant resides was furnished and thus the applicant's place of abode is unknown. It was contended that the sureties are not substantial, as the introduction letters for the sureties were written by an LC 1 Chairperson of an area where the sureties do not reside, thus their residences are not clear. It was contended, the sureties are much younger than the Applicant and therefore not capable of compelling the applicant to attend trial, if released. The financial status of the sureties were also questioned, thus, it was claimed, they would not be able of paying bond money to Government if the applicant is released and jumps bail. It was also contended that the Applicant has already been committed to the High Court for trial.

Representation

Mr. Julius Ojok, learned counsel appeared for the Applicant, who was present in court. He presented sureties and made brief oral submissions

and cited judicial precedents. Ms. Nyipir Gertrude for the State also made brief oral submissions and cited authorities. Court has considered both address by learned counsel and is grateful.

Analysis and determination

Bail is an agreement or recognizance between the accused (and his sureties, if any), and the court, that the accused will pay a certain sum of money fixed by the court should he/she fail to appear to attend his/her trial on a certain date. See: Opiyo Charles *alias* Small Vs. Uganda, Criminal Misc. Application No. 26 of 2022 (Okello, J.)

The object of bail is to ensure that the accused person appears to answer the charge against him/her, without being detained in prison on remand pending trial. The effect of bail therefore is to temporarily release the accused person from custody.

The principles which guide court in considering whether or not to grant bail are well settled. I will consider the key principles in my analysis.

The main consideration here is whether the applicant will attend his trial if released on bail, and whether or not he will interfere with witnesses or evidence, if released on bail: See Opiyo Charles alias Small Vs. Uganda (supra).

Mr. Ojok conceded that his client did not plead and adduce evidence of exceptional circumstances, especially grave illness, but hastened to submit that the exceptional circumstances are no longer a mandatory requirement, for purposes of bail. He cited Okello J in Opiyo Charles alias Small Vs. Uganda (*supra*), and argued that, court should consider other factors, such as the substantiality of sureties, for assurance to court that the applicant will turn up for trial if granted bail. Ms. Nyipir argued otherwise, contending that, in a case of this nature, exceptional circumstances ought to be satisfied.

I have carefully considered these rival arguments. It is not disputed that the applicant is accused of rape, which is a capital offence. In such cases, court needs assurance that an accused will turn up for his trial, if granted bail as the temptation to abscond is high. I find that, on the nature of the accusation, at least an exceptional circumstance especially grave illness would have perhaps persuaded court to consider the applicant's prayer for temporary release. Unfortunately, the applicant proved none, and his counsel rightly conceded.

On the issue of interference with the victim, the State counsel argued that, currently the relatives of the applicant are influencing the victim not to pursue the rape case against the applicant. Reliance was placed on an additional statement annexed to the opposing affidavit.

Mr. Ojok did not dispute that talks are happening between the family of the applicant and the victim's family. He argued that, the additional statement proves that the complainant is no longer interested in the case and that the applicant be forgiven, and that reconciliation ought to be promoted by court.

With respect, attempts to settle a criminal matter is no basis for suggesting that the State had no basis for opposing bail. Whereas this court appreciates the need for reconciliation between parties to all disputes, each case has to be considered on its peculiar facts. Here, a matter of a capital nature naturally attracts public interest, which the State represents. The factors that inform State prosecution under article 120 (5) of the Constitution, 1995 are thus the public interest, the interest of the administration of justice and the need to prevent abuse of legal process. It is thus my considered view that the State may frown upon persons trying to settle serious offences such as rape, out of court. Such matters are no longer for an accused and the victim and her/his family but State matters. And the State may refuse any such attempts at reaching an amicable settlement, in public interest and in the interest of avoiding abuse of the legal process and for the need to promote due administration of criminal justice.

I therefore do not agree with Mr. Ojok that the settlement attempts confirmed by the additional police Statement of the victim of the alleged rape proves that there is no basis for the State claim and opposition. On the contrary, as strongly argued for the State, it lends credence to the case of interference and the fear that the same would be reinforced by the applicant, if out on bail. I therefore hold that, if released, the applicant will interfere with evidence and the entire Prosecution case.

On the issue of sureties, as rightly submitted by the State counsel, the Sureties presented to court have letters of introduction not issued by their local leader but by a leader of another jurisdiction. This means the sureties cannot be owned up by the chairperson of their area of residence, being Opiro village, since the introduction letter was written for them by the LC Chairperson of Andara village where they do not reside. The explanation proffered by the sureties that the Chairperson of their area of residence, a one Anena Rose lacks stamps for her operations, is not proved, and very sad, if true. The same is at best, hearsay. The claim that Anena Rose was sick and could not write an introduction letter for the sureties, is not supported with medical evidence, and is hearsay.

I need not consider the reasons advanced against the sureties, such as their apparent young age as against the applicant, who it is alleged to be more senior than they, and their financial status. These need not detain

me here, as my conclusion is that, on the material considered, the sureties are not substantial.

In the circumstances, there is zero assurance that, if released on Bail, the applicant will turn up to face trial for the alleged rape. I therefore decline the application and is accordingly dismissed.

Delivered, dated and signed this 24th October, 2022.

Hkotdw. 24.10.2022

George Okello
JUDGE HIGH COURT

Ruling read in in the presence of;

Ms. Grace Avola, court clerk.
Ms. Nyipir Gertrude, State Attorney, ODPP, for the Respondent
The Applicant in court.
Mr. Julius Ojok, counsel for the Applicant is absent.

Hkotdw
Jud28
24/10/2022