

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO
CRIMINAL MISC. APPLICATION NO. 57 OF 2020
(ARISING FROM MUKONO CRIMINAL CASE NO. 125 OF 2019)

MUTESI SAWUYA APPLICANT

VERSUS

UGANDA RESPONDENT

BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA

RULING

1. This is an application for grant of bail pending trial. It is brought by way of Notice of Motion under Article 23(6) (a) of the Constitution of the Republic of Uganda, 1995 as amended, Section 14 and 15 of the Trial on Indictments Act, Cap. 23 and Rule 2 of the Judicature (Criminal Procedure) Applications Rules S.I No. 13-8. The brief grounds of the application as presented and supported by the affidavit of the Applicant are as follows:

(a) That the Applicant has a Constitutional right to bail subject to the discretion of this Court;

(b) That the Applicant has been on remand at Kirinya Prison in Jinja since her arrest in March 2018 to-date without any formal trial or appearance in Court;

(c) That the period so far spent on remand entitles the Applicant to mandatory bail;

(d) That the Applicant has a place of abode at Ntinda Zone, Njeru West Ward, Njeru Municipality in Buikwe District which is within the jurisdiction of this Court;

(e) That the Applicant has substantial sureties who like herself are ready and willing to secure her release and guarantee her attendance of Court whenever needed or directed by the Court;

(f) That it is in the interest of justice that the application is granted.

2. In her affidavit in support of the application, the Applicant deponed that she was arrested in March 2018 and subsequently charged and indicted of aggravated torture which she denies. That upon her arrest, she was produced before the Grade 1 Magistrate's Court at Njeru on 14th November 2018, who committed her to this Court for trial of the said case whereupon she was remanded to Kirinya Prison in Jinja where she remained incarcerated to-date awaiting formal trial. In addition, that she was informed by her lawyers that owing to the period spent on remand, she is entitled to mandatory bail.



3. Further, that she has a fixed place of abode at Ntinda Zone, Njeru West Ward, Njeru Municipality in Buikwe District, within the jurisdiction of this Court and she also has substantial sureties ready and willing to secure her release and guarantee her appearance in Court whenever directed by this Court. She has no previous or any other criminal record or pending charges against her anywhere nor is she serving any sentence for any offence or conviction and that she is ready to abide by any terms or conditions that this Court may impose on her upon granting her bail. She also undertakes in her affidavit not to interfere with any of the prosecution's witnesses or investigations.
4. In an affidavit in reply sworn by a one Nambozo Irene W., State Attorney dated on 23rd July 2021, the Respondent opposed the grant of bail to the Applicant mainly on grounds that; - the Applicant faces an offence which is grave in nature and involves a maximum punishment of death; that if released on bail, the Applicant is likely to abscond and the fact that the offence committed involves violence, the Applicant may interfere with prosecution witnesses.
5. Both parties filed their written submissions and the Applicant further filed a rejoinder. At the hearing of the application on the 19th July 2022, the Applicant was represented by Counsel Jacob Osillo Okoth of M/s Okoth-Osillo Advocates while the Respondent was represented by Counsel Nanteza Victoria Ann, State Attorney.
6. In his written submission, Counsel for the Applicant submitted that based on the principle of presumption of innocence, the Applicant has



a right to apply for and be granted bail pending hearing and disposal of the main criminal case. He relied on Article 23 (b) of the Constitution of the Republic of Uganda, 1995 (as amended) which provides that where a person is arrested in respect of a criminal offence the person is entitled to apply to the Court to be released on bail and the Court may grant that person bail on such conditions as the Court considers reasonable. He further submitted that the Applicant has since her arrest in March 2018 remained on remand awaiting her formal trial and to-date the said case against her has never been fixed for formal hearing or any upcoming session leaving her in a position of uncertainty for the last 4 years.

7. It is further submitted by Counsel for the Applicant that the Applicant has a fixed place of abode as confirmed by her National Identity Card which was attached to the Applicant's written submission. During the hearing of the application, through her Counsel, the Applicant presented three (3) sureties. The first was Hamidu Kalumira, 35 years old, a driver and husband of the Applicant a resident of Ntinda Zone, Njeru West Ward, Njeru Municipality, Buikwe District. The second surety was Ismail Kakaire, 62 years old, a tailor and father of the Applicant and a resident of Boda L.C.1 Wabulungu Ward, Magamaga Town Council, Mayuge District. The third surety was Nambi Kamuyati, 49 years old, mother of the Applicant and also resident of Boda L.C.1 Wabulungu Ward. The National Identity Cards of all the sureties and the introductory letters from their area Local Council Chairpersons were tendered and admitted in evidence.



8. In reply, the Respondent submitted in its written submission that the offence with which the Applicant is charged is grave in nature hence there is high likelihood of the Applicant absconding once released on bail. It was also submitted that the Applicant will interfere with the prosecution's witnesses, considering the fact that the victim is her step-child and they were living together. Additionally, the Respondent submitted that the Applicant has not presented the requirements of exceptional circumstances warranting her release on bail.
9. However, during hearing of the application the Respondent conceded to the Applicant's submission that the sureties presented are substantial but prayed that in the event that Court pleases to grant the Applicant bail, she should be given stringent terms and conditions for bail in order to compel her to return to this Court for trial.
10. In rejoinder, Counsel for the Applicant argued that the Constitution and all the other relevant laws do not bar grant of bail for the offence with which the Applicant is charged but give this Court discretion to consider circumstances and conditions meriting the grant of bail. Further, that the Applicant in her affidavit has proved sufficient grounds and circumstances that merit the grant of bail including the fact that she is a mother of a 6 years old infant to take care of, and that she has a known place of abode.

Issue

Whether the Applicant is entitled to be granted bail.



11. The right to apply for bail is enshrined in Article 23(6) of the Constitution of the Republic of Uganda, 1995 (as amended), which provides that where a person is arrested in respect of a criminal offence-

- (a) the person is entitled to apply to the Court to be released on bail, and the Court may grant that person bail on such conditions as the Court considers reasonable;
- (b) in the case of an offence which is triable by the High Court as well as by the subordinate Court, if that person has been remanded in custody in respect of the offence for sixty days before trial, that person shall be released on bail on such conditions as the Court considers reasonable;
- (c) in the case of an offence triable only by the High Court, if that person has been remanded in custody for one hundred and eighty days before the case is committed in the High Court, that person shall be released on bail on such conditions as the Court considers reasonable.

12. The legal essence behind bail is for upholding one's right to personal liberty. This is especially the product of the presumption of innocence as provided for under Article 28 (3) of the Constitution of the Republic of Uganda, 1995 as amended. It is trite law that a person whose liberty has been deprived by imprisonment before trial or when not serving a sentence is free to apply for bail. However, the discretion to grant or not grant bail lies with Court, which has to take into account all interests of justice of the parties and the society as a whole.



13. In the case of **Col. (Rtd.) Dr. Kiiza Besigye Vs Uganda, Criminal Misc. Application No. 228 of 2005 and Criminal Misc. Application No. 229 of 2005 at page 6**, the Justice Ogoola, (PJ then) said:

"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 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."

14. While the offence of aggravated torture is a serious one that carries a maximum sentence of life imprisonment under section 5 of the Prevention & Prohibition of Torture Act, 2012 (Act No. 3 of 2012), it remains the law that an accused is presumed innocent until proved guilty. It is therefore not right to act on fears and allegations of the possibility of abscondment if one is granted bail. In **Panjur vs. Republic [1973] EA 282**, it was held that



"If courts are simply to act on allegations, fears or suspicions, then the sky is the limit and one can envisage no occasion when bail would be granted whenever such allegations are made".

15. The Applicant has presented sureties who have been well identified before this Court with no objection from the Respondent. They are close family members that is, husband, father and mother of the Applicant, respectively. They have undertaken to ensure that she attends court when required to do so. Further, to prove that the Applicant has a fixed place of abode, her National Identity Card was attached to her written submission. Accordingly, the Applicant has satisfied the onus placed on her to prove that she has a permanent place of abode. With that address which is not disputed by the Respondent, her whereabouts can be traced once released on bail.
16. The Respondent's Counsel submitted in her written submission that the Applicant has not presented the requirements of exceptional circumstances warranting her release on bail. Vital to note that the requirement for exceptional circumstances to be proved before a person is granted bail pending trial have long been set aside by the Court of Appeal in the case of **Foundation for Human Rights Initiative vs. Attorney General, Constitutional Petition 20/2006**.
17. Since the sureties appear responsible persons who will ensure that the accused returns to court to stand trial, basing on the authorities cited in this ruling and the fact that the applicant has been on remand for about 4 years, I hereby hold that this is a fit and proper case for

grant of bail. Therefore, the application is allowed on the following terms:

- (a) The Applicant shall pay a cash bail of 2,500,000/= (two million five hundred thousand shillings);
- (b) Each surety is bonded in the sum of UGX 5,000,000./= not cash;
- (c) The Applicant shall report to the Deputy Registrar of the High Court of Uganda at Mukono once every month with effect from 9th September, 2022 till the disposal of the criminal case;
- (d) Each party shall bear their own costs.

I so rule and order accordingly.

This ruling is delivered this 9th day of August, 2022 by



FLORENCE NAKACHWA
JUDGE.

In the presence of:

- (1) Counsel Jacob Osillo Okoth from M/s Okoth-Osillo Advocates for the Applicant;*
- (2) Counsel Nanteza Victoria Ann, State Attorney, for the Respondent;*
- (3) Ms. Mutesi Sawuya, the Applicant;*
- (4) Ms. Pauline Nakavuma, the Court Clerk.*