

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO
CRIMINAL MISC. APPLICATION NO. 09 OF 2018
(ARISING FROM CRIMINAL CASE NO. AA- 019 OF 2017)

SSENDAULA ERIA **APPLICANT**

VERSUS

UGANDA **RESPONDENT**

BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA

RULING

1. The Applicant filed this application for bail pending the hearing of the criminal case against him. The application was by Notice of Motion under Articles 23 (1), (6) (a) & 28 (3) of the Constitution of the Republic of Uganda, 1995 as amended, section 33 of the Judicature Act, Cap. 13, section 14 of the Trial on Indictments Act, Cap. 23 and rule 2 of the Criminal Procedure (Application) Rules.
2. The brief grounds of the application are reflected in the Notice of Motion and averred in detail in the supporting affidavit sworn by the Applicant. The grounds are that:
 - (a) on the 20th March, 2017, the Applicant was arrested and detained at Busana Police Station after voluntarily cooperating with the police;



- (b) the Applicant was subsequently transferred to Kayunga Police Station where he was detained for 14 days and thereafter he was released on police bond;
- (c) at all material times prior to and subsequent to the Applicant's arrest and detention in police cells, the Applicant fully cooperated with the police in the investigations;
- (d) during the Applicant's detention, the police requested for his national identity card which he dutifully handed over to them and that he believes it to still be in their custody;
- (e) on 12th May, 2017, the Applicant was charged at Kayunga Chief Magistrate's Court with murder c/s 188 and 189 of the Penal Code Act and together with his co-accused remanded to Luzira Upper Prison where he continued to be detained to-date;
- (f) the conditions in prison are greatly affecting the Applicant as it is overcrowded with very many inmates some of whom have spent very many years on remand without trial;
- (g) subsequently, on 21st February, 2018, the Applicant was committed to the High Court for trial which has not yet been fixed due to the heavy and busy schedule of court as the court hears cases on a first come first serve basis and he believes that his trial is not likely to be soon;



- (h) the Applicant is a law-abiding citizen with no criminal record or pending case other than the one he is currently charged with for which he pleaded not guilty and maintains his innocence as a responsible member of the society;
- (i) the Applicant undertakes, if released on bail, to abide by such terms and conditions as may be set by the honourable court;
- (j) the allegations of interference with witnesses or evidence must be substantiated and if proved, the prosecution has the option of moving court to cancel the Applicant's bail if granted in case he is cited with interfering with witnesses either directly or indirectly, evidence or the course of justice, or that the Applicant could be charged under the Penal Code Act under sections 101, 102 and 103 with dire consequences of further imprisonment;
- (k) the Applicant has a constitutional right to be released on bail at the discretion of the honourable court and he prays to the court to exercise such discretion in his favour and grants his application;
- (l) one is presumed innocent until proved guilty and that the Applicant prays to court to grant him bail upon that principle since it is unjust and prejudicial to his right as a citizen to incarcerate him while still presumed innocent yet his trial is not about to commence and yet he can be released and allowed to continue with his normal daily life while reporting back to court;

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(m) the Applicant has a fixed place of abode at Kasota, Kayunga District within the jurisdiction of the honourable court;

(n) the Applicant has a family of six (6) that he looks after and he is the sole provider of all their needs and requirements and that his continued detention is adversely affecting their livelihood and welfare;

(o) the Applicant is committed to attend court at all times if granted bail and that he has substantial sureties who have undertaken and will ensure that he attends court at all material times as required by this honourable court and he will abide by the bail terms;

(p) the Applicant is ready to abide by any condition that may be imposed on him by this honourable court to ensure that he attends court;

(q) it is in the interest of justice that the Applicant be released on bail to enable him to have adequate time to prepare his defence and exercise his right to a fair hearing.

3. The Respondent filed an affidavit in reply dated 24th November, 2020 sworn by Nambozo Irene W. a State Attorney and filed in this court on 26th November, 2020. The substance of the contention by the Respondent is that:

(a) The Applicant is charged with murder, an offence that is grave in nature and carries a maximum sentence of death upon conviction;



6. The Applicant's counsel averred that Article 23 (6) (a) of the Constitution guarantees the right to apply to court to be released on bail and court may grant that person bail on such conditions as it considers reasonable. Counsel cited Article 28 (3) (a) of the Constitution and the case of **Col. (Rtd) Dr. Kiiza Besigye v. Uganda, Criminal Application No. 0020 of 2016** on presumption of innocence.
7. Referring to the case of **Okello Augustin v. Uganda, Miscellaneous Application No. 0020 of 2012**, learned counsel argued that the Applicant is charged with murder which is bailable by this honourable court. Further, that the Applicant under paragraph 15 of the supporting affidavit clearly stated that if he is granted bail, he shall not abscond since he has a permanent resident in Kasota Village, Namukuma Parish, Busaana Sub-County, Kayunga District as per the copy of his national identity card attached to the application.
8. That the Applicant has not been able to present the original national identity card as it remained at Busana Police Post with his wallet when he was arrested. Counsel presented the Applicant's voter's identification slip. In addition, counsel contended that the Applicant has 3 children whom after his incarceration have been staying with their grandmother Babirye Silicita (the Applicant's mother) who is also financially constrained to provide for their basic needs and that all these children were under his care before incarceration.
9. Furthermore, that the Applicant shall not interfere with the prosecution witnesses and shall not abscond. That he has no previous record and



(b) The Applicant has not proved by way of documentation his fixed place of abode as averred in paragraph 15 of the supporting affidavit apart from averring that he is a resident of Kasota, Kayunga District;

(c) The Applicant has not pleaded exceptional circumstances as required by the Trial on Indictment Act;

(d) The application is dismissed for lack of merit;

(e) Since the Applicant is committed to the High Court for trial, in the interest of justice, the case should be cause listed to the nearest High Court Criminal Session for trial.

4. Both parties filed their written submissions. At the hearing of the application, the Applicant was represented by Counsel Namata Edith from M/s Justice Centres, Uganda while the Respondent was represented by Counsel Nanteza Victoria Anne, State Attorney from the Office of Directorate of Public Prosecutions.
5. It was submitted for the Applicant that as per the copy of the indictment, the Applicant has been in custody for over 4 ½ years and has been committed for trial in the High Court and it is not known when the trial will take place. That 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. Also that the discretions to grant or not to grant bail however, lies with court which has to take all interests of justice of the parties and the society as a whole into account.

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is presumed innocent until proved guilty as he avers in his supporting affidavit to the application. Counsel asserted that proof of exceptional circumstances is no longer a mandatory requirement as propounded in the case of **Foundation for Human Rights Initiative v. Attorney General, Constitutional Petition No. 20 of 2006**. He prayed that the application is allowed and the Applicant is released on a non-cash bail on favorable terms.

10. During the hearing of the application on the 17th November, 2022, the Applicant's Counsel presented three (3) sureties and these were:

(a) Babirye Silicita, 52 years old, the biological mother of the Applicant and a farmer who is a resident of Kasota LC 1 Village, Namukuma Parish, Busaana Sub-county, Ntenjeru County, Kayunga District;

(b) Sserwada George William, 62 years old, the biological father of the Applicant, resident of Kasota LC 1 Village, Namukuma Parish, Busaana Sub-county, Ntenjeru County, Kayunga District, a farmer; and

(c) Nalubega Beatrice, 35 years old, the Applicant's biological sister resident of Kitale Village, Namukuma Parish, Busaana Sub-County, Ntenjeru County, Kayunga District, a neighboring village to Kasota Village.

The national identity cards of all the sureties and introductory letters from their area Local Council Chairperson were presented before court as evidence.

11. In opposition, the Respondent contended that the Applicant failed to prove that he has a fixed place of abode. Further, that the 1st surety has no telephone number and that the L.C letter presented for the 3rd surety indicates that she comes from a village different from that indicated in her national identity card. Learned counsel prayed for the Respondent that this court finds these two sureties not substantial and dismisses the application.

12. The Applicant's counsel rejoined that the law requires the surety to have the national identity card and L.C letter hence the 2nd surety has fulfilled these requirements under the law. That in regard to the 3rd surety, she registered her national identity card while still a resident of Nongo Village, Kayunga District but as per the L.C letter attached to the application, she currently resides in Kitale Village in Kayunga within the jurisdiction of this honourable court. Counsel prayed that the sureties be found substantial.

Issue

Whether the Applicant is entitled to be granted bail.

13. Bail is a fundamental aspect of any criminal justice system that guarantees the accused the right to a fair trial. The practice of granting bail grew out of the need to safeguard the fundamental right to liberty. Under Article 23 of the Constitution of the Republic of Uganda, 1995,



no person shall be deprived of his or her personal liberty unless so prescribed by a reasonable, fair and just procedure.

14. The paramount consideration for granting or refusing to grant bail is to strike a balance between individual rights and the interest of society. In other words, bail is devised as a technique for affecting the synthesis of two basic concepts of human values, namely the right of an accused person to enjoy his personal freedom and the public interest, subject to which, the release is conditional on the surety to produce the accused person in court to stand his or her trial.

15. Further, the discretion to grant bail under Article 23 (6) of the Constitution of the Republic of Uganda, 1995 and section 14 of the Trial on Indictments Act, Cap 23, should be balanced between two conflicting demands: shielding the society from misadventures of the person allegedly involved in the crime and presumption of innocence of the accused till he or she is proved guilty or pleads guilty as stipulated under Article 28 (3) (a) of the Constitution of the Republic of Uganda, 1995. Article 28(3) (a) provides thus:

“Every person who is charged with a criminal offence shall—

(a) be presumed to be innocent until proved guilty or until that person has pleaded guilty.”

16. The essence of this provision on presumption of innocence as regards bail is that an accused person need not suffer incarceration unreasonably as he or she is not yet a convict. However serious the nature of the charge against an accused, it remains an allegation until



proved. The seriousness of the offence must be balanced against the application of this presumption and other relevant factors when considering whether or not to grant bail.

17. Section 15 (1), (3) and (4) of the Trial on Indictments Act sets conditions under which court may refuse to grant bail. It provides thus:

“(1) Notwithstanding section 14, the court may refuse to grant bail to a person accused of an offence specified in subsection (2) if he or she does not prove to the satisfaction of the court—

(a) that exceptional circumstances exist justifying his or her release on bail; and

(b) that he or she will not abscond when released on bail.

(3) In this section, “exceptional circumstances” means any of the following—

(a) grave illness certified by a medical officer of the prison or other institution or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody;

(b) a certificate of no objection signed by the Director of Public Prosecutions; or

(c) the infancy or advanced age of the accused.

(4) In considering whether or not the accused is likely to abscond, the court may take into account the following factors—



- (a) whether the accused has a fixed abode within the jurisdiction of the court or is ordinarily resident outside Uganda;*
- (b) whether the accused has sound securities within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail;*
- (c) whether the accused has on a previous occasion when released on bail failed to comply with the conditions of his or her bail; and*
- (d) whether there are other charges pending against the accused."*

18. Regarding the consideration of whether the Applicant has a fixed place of abode, it is trite that the onus is on the Applicant to satisfy court that he or she has a permanent place of abode within the jurisdiction of court and that he or she is not a resident outside Uganda. In **Mugenyi Steven v. Uganda, Crim. Misc. Application 65/2004**, Justice Remmy K. Kasule (as he then was) held that:

"The onus of proof is on the Applicant to satisfy court that he has a permanent place of abode in a particular known Village, Sub-County, County and District."

This, in my view, is to enable court exercise jurisdiction over the Applicant while on bail and to be able to trace his or her whereabouts whenever it is necessary.

19. In the instant case, it was submitted for the Applicant that he has a fixed place of abode at Kasota L.C.1 Village, Namukuma Parish, Busaana Sub-County, Ntenjeru County, Kayunga District, where he



resides with his biological parents who are the 1st and 2nd sureties in this application. An L.C.1 letter from the area Chairperson dated 25th March, 2018 introducing the Applicant as a resident of his area, a copy of his national identity card and a copy of his Voter's location slip were all admitted in evidence.

20. This court is satisfied that the Applicant has presented the necessary proof as required by paragraph 12 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, Legal Notice No. 8 of 2022 and has accordingly discharged such a burden placed on him to prove his place of permanent residence.
21. This court has also considered the three sureties presented before this court by the Applicant's counsel and find them substantial. Having no phone contact by the 2nd surety does not make him unsubstantial. This court is convinced that the documents presented for each surety are enough for this court to trace them in case they fail to compel the Applicant to appear before court as and when required. Besides, considering the close kinship between the Applicant and the sureties, being the biological parents and sister of the Applicant, this court can safely conclude that he would not want to jeopardize the sureties by absconding or flouting bail conditions.
22. Having carefully evaluated the factors for and against this application, I am inclined to grant bail considering the fact that the Applicant has spent about 5 ½ years on remand. The prosecution should expedite the prosecution of this case or the Director of Public

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Prosecutions should enter a nolle prosequi if the State does not wish to continue with the criminal case.

23. Pursuant to the foregoing, I hereby grant the Applicant bail on the following terms:

- (a) the Applicant shall pay cash bond of UGX 5,000,000;
- (b) each surety is bonded in the sum of UGX. 8,000,000./= 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 15th February, 2023 till the disposal of the main criminal case;
- (d) each party shall bear their own costs of this application.

I so order.

This ruling is delivered this 16th day of Jan. 2023 by



FLORENCE NAKACHWA
JUDGE.

In the presence of:

- (1) *Counsel Namata Edith from M/s Justice Centres, Uganda, for the Applicant;*
- (2) *Mr. Ssendaula Eria, the Applicant;*
- (3) *Ms. Pauline Nakavuma, the Court Clerk.*