

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO
CRIMINAL MISC. APPLICATION NO. 19 OF 2022
(ARISING FROM LUGAZI CRIMINAL CASE NO. 37 OF 2021)

1. SERUKWAYA STEVEN

2. LUKWAGO RICHARD

3. MAFUMU NATHAN APPLICANTS

VERSUS

UGANDA RESPONDENT

BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA

RULING

1. The Applicants instituted this application by Notice of Motion seeking an order for their release on bail. The application is brought under the provision of Articles 23 (6) (c) & 28 (3) (a) of the Constitution of the Republic of Uganda, 1995, section 14 (1) of the Trial on Indictments Act, Cap. 23, Rule 2 of the Judicature (Criminal Procedure) (Application) Rules and all enabling laws.
2. The grounds of the application are briefly set out in the Notice of Motion and averred in detail in the supporting affidavits to the application sworn by the Applicants dated 5th April, 2022. The grounds were that:
 - (a) the 1st Applicant is a resident of Kikutu Village, Ngogwe Sub-county in Buikwe District;



- (b) the 2nd Applicant is a resident of Mawoloba LC 1 Village, Ngogwe Sub-county in Buikwe District;
- (c) the 3rd Applicant is a resident of Mawoloba L.C.1 Village, Ngogwe Sub-County, Buikwe District;
- (d) the Applicants are of sound minds presently on remand in Bugungu Government Prison, Buikwe District and Luzira Government Prison, Kampala District respectively;
- (e) the Applicants were charged with murder under Lugazi Criminal Case No. 37 of 2021, at Lugazi Court;
- (f) the Applicants were informed in court that the offence with which they were charged is triable only by the High Court;
- (g) the 1st Applicant was remanded at Bugungu Government Prison on the 21st day of June, 2021 and he has been there on remand;
- (h) the 2nd Applicant was remanded at Bugungu Government Prison from 21st June, 2022 where he has been since his remand;
- (i) the 3rd Applicant was remanded at Luzira Government Prison where he has been on remand since 21st June, 2021;
- (j) the period for pre-trial remand for offences triable by the High Court is 180 days which translates into 6 months;
- (k) the Applicants have never appeared in court again for committal;



(l) the probability of the case against the Applicants being heard and completed soon is unknown;

(m) the Applicants have no means to interfere with investigations and that they shall not interfere with investigations in the case against them;

(n) this court has the jurisdiction to release the Applicants on bail having been in jail on remand for a period longer than 180 days;

(o) the Applicants have persons ready, willing and able to stand surety for them whom they pray that court may find substantial;

(p) the Applicants have young families whose livelihoods are their responsibilities as sole bread winners;

(q) the Applicants undertake to abide by the conditions the court may impose on them for their bail.

3. The Director of Public Prosecutions filed an affidavit in reply dated 28th November, 2022 sworn by Nanteza Victoria Anne, a State Attorney and filed in this court on 30th November, 2022. The substance of the contention was that:

(a) the Applicants do not disclose whether or not they have permanent residents and as such fixed places of abode within the jurisdiction of this honourable court;

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(b) the attached details of sureties don't prove that they are substantial sureties guaranteeing their compliance with the conditions that might be imposed or set by this honourable court for the release of the Applicants on bail;

(c) the offence with which the Applicants are charged is a very serious offence which attracts a maximum of death sentence once convicted and this fact is within the knowledge of the Applicants and therefore is likely to influence them to abscond in case of their release on bail;

(d) due to the seriousness and the sensitivity of the offence with which the Applicants are charged, once released on bail, they are likely to interfere with the key witnesses who are well known to them and these witnesses are currently not under any protection;

(e) the Applicants have not demonstrated that they have any exceptional circumstances justifying their release on bail and no evidence of the same has been attached to their applications for release on bail by the honourable court.

4. Only the Applicants' counsel filed the Applicants' written submissions. On the 30th day of November, 2022 when the application came up for hearing, the Applicants were represented by Counsel Denis Kiwalabye Kimanje from M/s Kaweesi & Partners Advocates. The Respondent was represented by Counsel Lydia Atubo Adit, State Attorney from the

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Office of Directorate of Public Prosecutions who conceded to the application.

5. The Applicants' counsel submitted that the prosecution in this case has deposited its case in court and gone to sleep. That at the time of making the application, the accused persons have been on remand for over 450 days. They have not been brought in court for over a period of over 15 months and they have not been informed about the progress of the investigation in their case. That literally, the accused have been incarcerated.
6. That this application for release of the accused on mandatory bail meets the requirements of Regulation 12 of the Bail Guidelines. Further, that the copies of the national identity cards and introductory letters from the L.C officials in respect of each accused were attached to the respective supporting affidavits. And that the application also meets the requirements of Regulation 15 of the Bail Guidelines. It is the Applicants' submission that the consideration for bail under Regulation 14 of the Bail Guidelines do not apply to this particular application for mandatory bail. That this court is enjoined under Regulation 10 of the Bail Guidelines to release the Applicants on bail on reasonable conditions.
7. Learned counsel prayed that this court considers reasonable but not harsh conditions of bail. That the prosecution has failed to complete the investigation in more than 15 months not because the case is complex but because there is no evidence that could warrant further

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investigation or lead to any evidence that might implicate the accused. And that all they have is hearsay and suspicions. Further, that the chances of the accused jumping bail in a case with scanty evidence are next to none. That the Applicants have fixed places of abode with families and that they are ordinarily low income citizens of relatively advanced age. Counsel added that there is no possibility to start a new life in another place other than their places of abode.

8. At the hearing of the application, counsel presented three (3) sureties for each Applicant and these were:

(a) Mr. Muganga Patrick, 40 years old, the maternal uncle of the 1st Applicant, a farmer, resident of Mawoloba Village, Namulesa Parish, Ngogwe Sub-County, Buikwe County, Buikwe District;

(b) Mrs. Nasuuna Justine, 30 years old, the wife of the 1st Applicant, also resident of Mawoloba Village, Namulesa Parish, Ngogwe Sub-County, Buikwe County, Buikwe District;

(c) Ms. Nakamya Resty, 31 years old, the sister-in-law of the 1st Applicant, a farmer, resident of Natyoole Village, Dungi Parish, Ngogwe Sub-County, Buikwe County, Buikwe District;

(d) Mrs. Naziwa Milly, 37 years old, the wife of the 2nd Applicant, a farmer, resident of Mawoloba Village, Namulesa Parish, Ngogwe Sub-County, Buikwe County, Buikwe District;

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- (e) Ms Bajula Manjeri, 39 years old, the sister-in-law of the 2nd Applicant, a farmer and business lady, resident of Nakatyaba Village, Ssugu, Buikwe County, Buikwe District;
- (f) Mr. Zziwa George Wilson, 36 years old, the brother-in-law of the 2nd Applicant, a farmer and businessman, resident of Namengo Kasenke Cell, Namengo Ward, Lugazi Central Division, Lugazi Municipality, Buikwe District;
- (g) Mrs. Nantaayi Rebecca, 30 years old, the wife of the 3rd Applicant, a farmer, resident of Kikutu Village, Namulesa Parish, Ngogwe Sub-County, Buikwe County, Buikwe District;
- (h) Mr. Mpiima Matia, 67 years old, the elder brother of the 3rd Applicant, resident of Kisaala Village, Malongwe Parish, Buikwe Sub-County, Buikwe County, Buikwe District;
- (i) Mr. Wambi Paul, 26 years old, the brother-in-law of the 3rd Applicant, a farmer, resident of Mutwe Village, Sugu Parish in Buikwe District.

9. The National Identity Cards of all the nine (9) sureties and introductory letters from their area Local Council Chairpersons were presented before court as evidence. It was further averred for the Applicants that they will stand trial to its logical conclusion. Counsel prayed for a non-cash bond of UGX. 2,000,000/= for each of the Applicants and UGX.

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5,000,000/= for each of the sureties. (see the case of **Nankabirwa & Anor v. Uganda**, HCMA No. 81 of 2020).

Issue

Whether the Applicants are entitled to be granted bail.

10. Article 23 of the Constitution of the Republic of Uganda, 1995 as amended provides for the protection of personal liberty. Article 23 (6) states 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 a 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 to the High Court, that person shall be released on bail on such conditions as the court considers reasonable.”

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The reasoning behind the provisions of Article 23 (6) can be found in Article 28 (3) (a) of the Constitution which 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.”*

11. Paragraph 10 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 provides for mandatory bail for offences triable only by the High Court. Paragraph 10 states as follows:

“(1) Where an offence is triable only by the High Court, if a person has been remanded in custody in respect of that offence for one hundred and eighty days before the case is committed to the High Court, that person shall be released on bail on such conditions as the court considers reasonable.

(2)

(3) For the avoidance of doubt, mandatory release on bail for offences triable by the High Court under article 23 (6) (c) of the Constitution shall be granted only by the High Court.”

12. Section 14 of the Trial on Indictments Act, Cap 23 grants this court power to release an accused person on bail at any stage of the proceedings, on taking from him a recognizance consisting of a



bond, with or without sureties for such amount as is reasonable in the circumstances of the case, to appear before the court at such a date and at such a time as is named in the bond. Section 15 of the same Act sets conditions under which court may refuse to grant bail.

13. In the case of **Kayongo Bashir v. Uganda, High Court Crim. Misc. Application No.158 of 2019**, Justice Flavia Senoga Anglin at page 4 held 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. However, the discretions to grant or not grant bail lies with court, which has to take all interests of justice of the parties and the society as a whole into account".

14. Further, in the case of **Yassin v. Uganda, Crim. Misc. Application 4 of 2016**, Justice Stephen Mubiru stated that:

"In bail applications, courts should lean in favour of and not against the liberty of the accused as long as the interests of justice will not be prejudiced".

15. In the instant application, the Applicants have been on remand for over 180 days stipulated in the Constitution of the Republic of Uganda, 1995 as amended and paragraph 10 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022.



Therefore, each of them qualifies for mandatory release on bail as they have not been committed for trial before the High Court.

16. The Applicants, through their counsel, presented sureties who have been well identified before this court. The Respondent's counsel did not object to the sureties. The sureties are close family members to the Applicants, who have undertaken to ensure that the Applicants shall attend court when required to do so. This court therefore finds the sureties substantial. Suffice to mention that the role of sureties as stated in **Halsbury's Laws of England 4th Edition Vol II page 112 - 113 para 166**, is thus:

"The effect of granting bail is not to set the defendant free, but to release him from the custody of the law and to entrust him to the custody of his sureties, who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of the law, and he will then be imprisoned, unless he obtains fresh bail. A surety who believes that the principal is likely to break the condition as to his appearance may have him arrested by a constable....."

17. Further, to prove the Applicants' fixed places of abode, their national identity cards and introductory letters from the area Local Council Chairpersons were attached to their respective supporting affidavits. Accordingly, the Applicants have discharged the onus placed on them to prove that they have permanent places of abode. With those addresses which are not disputed by the Respondent,



the Applicants' whereabouts can easily be traced once released on bail. However, the Respondent is explored to expedite the prosecution of the criminal case against the Applicants so that the case is heard or a *nolle prosequere* be entered by the Director of Public Prosecutions under Article 120 (3) (d) and (4) (b) of the Constitution of the Republic of Uganda, 1995 as amended and section 134 of the Trial on Indictments Act, Cap 23..

18. Pursuant to the foregoing, I find merit in the application and hereby grant the Applicants bail on the following terms:

(a) each of the Applicants shall execute a cash bond of UGX 5,000,000/=;

(b) each surety shall execute a bond of UGX. 8,000,000/= NOT cash;

(c) each Applicant shall report to the Deputy Registrar of the High Court of Uganda at Mukono every month with effect from the 17th day of February, 2023;

(d) each party shall bear their own costs of this application.

I so rule and order accordingly.

This ruling is delivered this 17th day of Jan. 2023 by



FLORENCE NAKACHWA
JUDGE.

In the presence of:

- (1) Counsel Kyalisima Brian from M/s Kaweesi & Partners Advocates,
for the Applicants;*
- (2) Mr. Serukwaya Steven, the 1st Applicant;*
- (3) Mr. Lukwago Richard, the 2nd Applicant;*
- (4) Mr. Mafumu Nathan, the 3rd Applicant;*
- (5) Ms. Pauline Nakavuma, the Court Clerk.*

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