

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CRIMINAL MISC. APPLICATION NO. 070 OF 2023

(ARISING FROM CRIMINAL CASE NO. 55 OF 2023)

HYTHAM ALI :::::::::::::::::::: APPLICANT

VERSUS

UGANDA :: RESPONDENT

BEFORE: HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA
NTAMBI

RULING

The Applicant filed this application for bail pending trial under **Article 23(6)(a) of the Constitution of the Republic of Uganda, 1995 as amended, Section 14(1) and 15 of the Trial on Indictments Act Cap 23, Rules 2 & 4 of the Judicature (Criminal Procedure) (Applications) Rules SI 38-8 and Paragraph 6 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions 2022**. The application was supported by the applicant's affidavit dated 22nd September 2023 which raised several grounds which are summarized as follows: -

- 1) The Applicant was charged with the offence of Aggravated Robbery contrary to Sections 285 & 286(2) of the Penal Code Act Cap 120 and was remanded at Kirinya Government Prison.
- 2) That the offence with which the Applicant is charged with is bailable by this Honorable Court.
- 3) That the Applicant has no criminal record and neither does he have any other charges pending against him in any court of law.
- 4) That the Applicant is a resident of both Butiki Mataala Cell, Buwenda Town Ward, Jinja North Division and Lubas Road, Southern Division, Jinja City



with a permanent place of abode and workshop where he lived and worked for the last five (5) years and has sound substantial sureties within the Jurisdiction of the Honorable Court.

5) That the Applicant still enjoys the presumption of innocence under Article 28(3) of the 1995 Constitution as amended.

6) That the Applicant shall abide by the terms set by this Honorable Court and will not abscond when released on bail.

7) That in the interest of justice, this application be granted and the applicant be released on bail.

10 The Respondent filed an affidavit in reply opposing the application deposed by No. 19309 D/SGT Swaga Martin dated 9th November 2023 whose grounds are stated hereunder: -

1. That the Applicant is charged with 22 others and has already been committed to the High Court for trial.

15 2. That Aggravated Robbery is a serious crime and the Applicant will abscond when released on bail.

3. That the Applicant and his co-accused persons are part of a criminal gang which caused a lot of insecurity in Jinja City.

20 4. That insecurity in Jinja City is an issue of great public and national concern and that the arrest and detention of the Applicant saw return of peace and security in Jinja City.

5. That the Applicant has not no fixed placed of abode within the jurisdiction of this Court.

6. That the proposed sureties are not substantial.

25 7. That the Applicant has not demonstrated the existence of any exceptional circumstances to warrant his release on bail.

8. That in the interest of justice the applicant should not be granted bail.

Representation

30 At the hearing of the bail application, Counsel Sharif Ssemaganda appeared for the Applicant while the State was not represented.

Court informed the Applicant's Counsel that it had received a letter from the State on the 13/11/2023 requesting for an adjournment since the Prosecutor in personal

conduct of this case was handling another matter in the Supreme Court. Court inquired if Counsel had received the said letter.

5 Counsel for the Applicant informed Court that he had received the letter in the previous night via WhatsApp from an unknown number (0777219025). Counsel submitted that this was the second time that the Applicant was appearing in court together with his sureties for the bail application to be heard and also emphasized that on 7th November, 2023 when the matter came up for hearing in Court, both parties agreed on this date to proceed with the hearing on 14th November, 2023. Counsel argued that the State should have made reasonable effort to have this file
10 allocated to another State Attorney since the formalities of bail applications are usually the same. Counsel prayed to Court to be allowed to proceed exparte in this application.

15 In its ruling on the application by the Applicant's Counsel to proceed exparte, Court stated that the State was duly served with application on 26th October, 2023. That when the parties appeared in court on 7th November 2023, the State prayed for time to file a reply by 10th November 2023 which prayer was granted by Court. That the Court had only been furnished with the State's reply which had been filed on 9th November 2023 on the day of hearing the application on 14th November 2023. Court
20 observed that despite having been served with the Application on 26th October, 2023, and having been granted time by Court to file its reply by 10th November, 2023 and have the matter heard on 14th November, 2023, there was no representation by the State on the day of the hearing. In the circumstances, Court granted the Applicant's prayer for the Application to proceed exparte at the hearing and explained that it
25 would consider the reply of the State on record to make a decision.

Applicant's Submissions

30 Counsel for Applicant made oral submissions and stated that the bail application was premised on Article 23(6) (a) of the Constitution, Sections 14 and 15 of the Trial on Indictments Act (TIA) and Regulations 2 and 4 of the Judicature Criminal Procedure Application Rules. Counsel for the Applicant submitted that he was seeking for orders for the accused to be released on bail on such conditions as court deems fit. That the Applicant was charged with Aggravated Robbery contrary to Sections 284
35 and 286 of the PCA. That the said offence is bailable by this Honourable Court.

Counsel for Applicant submitted that the Applicant had no criminal record and neither did he have any other charges pending in any Court. Counsel for Applicant submitted that Applicant still enjoyed the presumption of innocence. He further submitted that Applicant is a resident of Butiki Mataala Cell, Buwenda Ward and Lubas Road Southern Division, Jinja City. That the Applicant's permanent place of abode is Butiki Mataala Cell and he would sometimes reside at the workshop where he was employed at Lubas Road.

Counsel for Applicant submitted that the application was supported with the affidavit of Hytham Ali which was adopted entirely in this application.

The Applicant presented four (4) substantial sureties as follows;

1. **HADIJA BIN ASALI** a female adult aged 48 years old. A Resident of Butiki Mataala Cell, business woman dealing in catering. The biological mother of the accused. Her mobile telephone contact number is 0741990717. The duties of a surety had been explained to her.
2. **HUMUDA JUMA** a male adult aged 38 years old, a resident of Lubas Road Cell, Jinja City whose original Identity Card was furnished to court. He is business man and a mobile chef. His business is located on Plot 7 Lubas Road. He is a best friend to the Applicant and his mobile telephone contact is 0740592069. The duties of a surety had been explained to him.
3. **MULINDWA FATUHU** a male adult aged 24 years old. Resident of Lubas Road, Jinja City. A driver by profession who drives trailers for Ashraf Mohamed Transporters located on Spire Road near Spire Road Primary School. He is a biological elder brother of the Applicant. His mobile telephone contact is 0755-984756. The duties of a surety had been explained to him.
4. **NAMULINDWA NATUWA** a female adult aged 26 years old. Her original Identity Card was furnished to court. She is a resident of Namuwaya Zone, Mbikko, Njeru Municipality, Buikwe District and is a house wife married to Shiraz Mustapha Nsubuga. She is a biological elder sister to the Applicant. Her mobile telephone contact is 0758-581793. She also provided her husband's mobile telephone contact number which is 0753-159133. The duties of a surety had been explained to her.

Counsel for Applicant prayed to this Honorable Court to find the sureties substantial and release the Applicant on bail on favourable terms.

can the Applicant be traced if he/ she absconds. This is usually proved through confirmation from the area Local Council Chairperson (LCI). In this case, the Applicant presented an introduction letter from the Chairperson LC I of Butiki Mataala Cell, Buwenda Town Council Ward, Jinja North Division indicating that he is a resident of Butiki Mataala Cell, Buwenda Town Council Ward, Jinja North Division which he reiterates in Paragraph 4 of his Application and paragraph 6 of his affidavit in support of the Application. However according to paragraph 12 of the affidavit opposing the said bail application deposed by No. 19309 D/SGT Swaga Martin, he avers that he was instructed by the Resident Chief State Attorney, Jinja to verify the documents which were presented by the Applicant in support of his Application and he established that the Applicant is not a permanent resident at Lubas Road, Southern Division Jinja City but is a brother to Mulindwa Fathuhu who is a tenant on Plot 25 owned by Hon. Grace Balyeku Moses. This Court has observed that the Applicant presented an introduction letter from the LC1 Chairman of Butiki Mataala Cell, Buwenda Town Council Ward, Jinja North Division confirming him as a resident of the area. He did not present a letter from the authorities confirming him as a resident at Lubas Road, Southern Division Jinja City. The State made an attempt in Paragraph 13 of the affidavit in support to its reply to object to the Applicant's fixed place of abode as being Butiki Mataala Cell, Buwenda Town Council Ward, Jinja North Division. However, no substantial evidence was attached to this affidavit to contradict the letter presented by the Applicant from the LC1 Chairman of Butiki Mataala Cell, Buwenda Town Council Ward, Jinja North Division which confirmed the Applicant as a resident of the area. This begs the question as to whether No. 19309 D/SGT Swaga Martin verified this information.

Resultantly, I find that the Applicant has furnished sufficient evidence to prove to this Court that he has a fixed place of abode at Butiki Mataala Cell, Buwenda Town Council Ward, Jinja North Division which is within the jurisdiction of this Court.

In consideration of the substantiality of the four sureties presented by the Applicant before this Court that is Hadija Bin Asali the Applicant's biological mother, Humuda Juma a friend of the Applicant, Mulindwa Fatuhu the Applicant's brother and Namulindwa Natuwa the Applicant's sister, I have observed that introduction letters from LC1 Chairpersons of their respective places of abode were furnished to this Court. However, according to affidavit opposing the Application sworn by No.

19309 D/SGT Swaga Martin under Paragraph 12 (ii), he avers that Plot 7 Lubas Road is not the permanent residence of Humuda Juma but is a Mosque house commonly called Asharif House. I am in disagreement with the averments by No. 19309 D/SGT Swaga Martin since he did not attach any evidence of the said LC1 Chairman of the said area to his affidavit to refute the claims that Humuda Juma is a resident of Plot 7 Lubas Road. Having sufficiently explained his obligations as a surety to this Court and having proved his fixed place of abode, I am satisfied that Humuda Ali is a substantial surety. Hadijah Bin Asali and Namulindwa Natuwa are both close relatives of the Applicant who I strongly believe have his best interests at heart and will ensure that he does not abscond trial. I find these two sureties substantial. I am not satisfied that Mulindwa Fatuhu is a substantial surety since he failed to convince this Court that he fully comprehends his obligations as a surety.

With regard to the character and antecedents of the Applicant, it was submitted that the Applicant is a first time offender. However, according to paragraph 6(i) of the affidavit opposing the application deponed by No. 19309 D/SGT Swaga Martin, he avers that the Applicant and others are part of a criminal gang which has been terrorizing the people of Jinja. Under paragraph 9 of the affidavit opposing the Application, he avers that due to the insecurity in Jinja City, the Office of the President got concerned and intervened in a letter annexed as "B"

I have perused the said letter which I have found it to be a general letter regarding the insecurity in Jinja City. It does not in any way single out the Applicant as the offender. Further, the Respondent has not adduced any other evidence to this Court to prove that that the Applicant is a not a first time offender. The Respondent relies on the charges that have been brought against the Applicant as a ground to deny him bail. That Courts takes into serious consideration that the Applicant still enjoys the presumption of innocence until proven guilty as provided for under Article 28(3) of the Constitution of the Republic of Uganda.

Having presented three substantial sureties who understood their obligations as sureties two of whom are closely related to the Applicant, I am inclined to allow this Application on the following terms;

- 1) Cash bail of UGX 400,000 (four hundred thousand shillings) only.
- 2) Non cash bail against each one of the sureties to the tune of Uganda Shillings 2,000,000 only.

3) The Applicant shall report to the Deputy Registrar of this Court on the last day of each month with effect from 30th January 2024.

Any contravention of the above terms will result into automatic cancellation of the bail granted.

5 I so order.



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- FARIDAH SHAMILAH BUKIRWA NTAMBI

10 JUDGE

12/12/2023

