

- b. That the applicant was first arrested on or about the 10th day of October 2022 and detained for a period of 4 days at Kibiito Police Station. He was again rearrested on the 13th day of September 2023 for 8 days and thereafter charged with aggravated defilement and arraigned before the Chief Magistrate's Court of Fort Portal on the 20th of September 2023 and remanded to the Fort Portal Remand Home.
- c. Although the offence in which the applicant is charged is grave in nature, it is bailable by this Honorable court.
- d. The applicant is entitled to the constitutional presumption of innocence until proven or pleaded guilty.
- e. The applicant has a fixed place of abode at his parents' home in Kyokya cell, Central Ward, Nyakigumba Town Council, Bunyangabu District which is within the jurisdiction of this court.
- f. The applicant is a school going child who is currently in primary six at Busiita Primary School in Bunyangabu district.
- g. The applicant has substantial sureties who are conversant with the obligations of sureties and have a place of abode within the jurisdiction of this court.
- h. That since investigations are not yet complete, it may take a long time for the matter to be heard and the applicant undertakes not to interfere with the investigations.
- i. That the applicant has experienced a violation of his rights having been detained for 12 days in adult cells at Kibiito Police Station and he has not been appearing in court on designated days.
- j. That the applicant has been on remand for 2 months without being committed to the High Court.

k. That the applicant is a juvenile offender without any previous criminal record.

Representation and hearing.

The applicant is represented by Counsel Brian Tandeka of M/S Legal Aid Clinic of the Law Development Centre. The respondent is represented by Counsel Harriet Adubango, the State Attorney. The respondent did not file a response to this application. Counsel for the applicant filed written submissions which I have considered in this ruling.

Consideration by Court

The application before me is that of a minor aged 14 years who is seeking bail. It is trite that a court before which a child appears charged with any offence shall uphold the right of the child to apply for bail guaranteed under the Constitution and the law **(See Paragraph 17(1) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022).**

Section 90(1) of the Children Act Cap. 59 provides thus:

“Where a child appears before a court charged with any offence, the magistrate or person presiding over the court shall inquire into the case and unless there is a serious danger to the child, release the child on bail—

(a) on a court bond on the child’s own recognisance;

(b) with sureties, preferably the child’s parents or guardians who shall be bound on a court bond, not cash.”

Paragraph 17(3) of The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, **2022** provides that:

A court considering a bail application by, or on behalf of, a child, shall inquire into—

(a) the criminal charge against the child, including the nature of the offence and severity of punishment;

(b) the likelihood of serious danger to the child and if it is in the child's best interest to remove him or her from association with any person; or

(c) the likelihood that the release of the child would defeat the ends of justice.

The applicant herein is charged with the offence of aggravated defilement contrary to section 129(3) and (4)(a) of the Penal Code Act. This offence is by any measure grave. However, I am cognizant of the fact the applicant has a right to be presumed innocent as provided for in Article 28(3)(a) of the Constitution. The applicant also has the right to apply for bail, and this court has the discretion to grant bail on such terms and conditions as it considers reasonable **(See Uganda Vs Kiiza Besigye Const. Ref No. 20 OF 2005)**.

In determining whether there is a likelihood of serious danger to the child and if it is in the child's best interest to remove him or her from association with any person, I have considered the Social Inquiry Report on the applicant authored by Kabakaali Doreen, a senior probation officer of Bunyangabu district, dated 18/09/2023.

The report states that the victim underwent a medical examination, which affirmed that she was defiled. Despite this, the victim is reported to be "doing well" and attending school. The applicant, a pupil at Busiita Primary School, is described as well-behaved with no history of violence or harassment. The parents provide support, and there is no record of wrongdoing reported to Local Council Authorities. The Senior Probation Officer however notes that there is potential conflict between the victim's and the accused's parents.

There is also a report by the Headteacher of Busiita Primary School which confirms that the applicant is studying at the school, currently in primary six and is a well-behaved boy though weak in academic performance. The report adds that the school has never registered any major indiscipline case against the child.

I am inclined to balance the rights of the applicant and the interests of justice. From the two reports, the applicant appears to have no history of violence. The absence of prior disciplinary issues supports the conclusion that releasing the applicant on bail poses no serious danger to him. Instead, it would enable him to continue attending school.

On the issue of the likelihood that the release of the child would defeat the ends of justice, the applicant is a minor and given his background as indicated in the Social Inquiry Report, there is no indication that his release would impede or interfere with investigations. I find no compelling reason to believe that granting bail would defeat the ends of justice. Thus, releasing the applicant aligns with the pursuit of justice.

Paragraph 17(4) of The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 provides that in granting bail, a

court shall release a child on bail either on a court bond on the child's own recognisance or with sureties, preferably the child's parents or guardians who shall be bound on a court bond, not cash.

Although the applicant had listed four sureties in the application, only two sureties appeared before this court, namely:

- a. Amanayire Patrick, the biological father of the applicant and a resident Kyokya cell, Central Ward, Nyakigumba Town Council, Bunyangabu District. His introduction letter, phone number and a copy of his National Identity Card have also been received on record.
- b. Keneema Stella, the biological mother of the applicant and a resident of Kyokya cell, Central Ward, Nyakigumba Town Council, Bunyangabu District. Her introduction letter, phone number and a copy of his National Identity Card have also been received on record.

Counsel for the applicant argued that these sureties are substantial, and they have been briefed on the duty of the surety which is ensuring that the applicant attends court as and when required.

What would amount to a substantial or sufficient surety is quite relative and would of necessity depend on the circumstances of each case. Odoki, B. J, in his book **“A Guide to Criminal Procedure in Uganda”, LDC Publishers, 2006 (3rd Edition) at p.9** stated that:

“The court should inquire into the worth and social position of sureties. The sureties must have the means to answer for the sum involved (recognizance) and should be persons of some social standing in the community.”

The role of sureties was explained by Hon. Lady Justice Florence Nakacwa in the case of **Sher Sign Shekhawat Vs Uganda Cri Misc App No 11 of**

2023 quoting the *Halsbury's laws of England 4th Edition Vol II page 112-112 paragraph 166* in the following terms:

“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 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.”

I do take the foregoing parameters into account as I evaluate the substantiality of the sureties provided. Further, in my view, the over-riding consideration in an application such as the present one is that the terms of bail granted should be such as would ensure the grantee's compliance with the bond reporting terms as is implicit in section 14(1) of the TIA, as well as his/ her appearance for the substantive trial.

Given that the sureties are the biological parents of the applicant, and the applicant is staying with them at their home in Kyokya cell, Central Ward, Nyakigumba Town Council, Bunyangabu District which is within the jurisdiction of this court, I find them to be substantial and in a position, to produce the applicant to court whenever he is required to do so and eventually when the case is fixed for trial.

Paragraph 17(2)(b) of **the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022** provides that in considering the

grant of bail for a child, the deprivation of personal liberty pending trial shall be used only in exceptional circumstances, as a measure of last resort and for the shortest possible period.

In the circumstances, I see no reason why the applicant should be deprived of his personal liberty pending trial. I therefore find merit in this application and hereby order the applicant to be released on bail on the following terms:

- i. Each of the sureties is to execute a non-cash bond of UGX 5,000,000/=
- ii. The applicant is to report to the Deputy Registrar of this court on the first Tuesday of every month until the commencement of his trial or further orders of the court.

In conclusion, this application is allowed. I order the release of the applicant on bail subject to the satisfaction of the conditions set out above or unless he is held on other lawful charges.

I so order.

Ruling delivered at Fort Portal this 1st day of December 2023.



Vincent Emmy Mugabo
Judge