

- b. The applicant has a permanent place of abode in Kabagona Zone, Kyezi Parish, Mugusu Sub-County in Kabarole district which is within the jurisdiction of this Court.
- c. The applicant has suitable sureties within the jurisdiction of this court who have undertaken to comply with any bail conditions imposed on him by this court.
- d. The applicant has no previous criminal record or any charges pending before this court.
- e. That if this application is granted, the applicant will not interfere with the investigations which have been concluded by the prosecution.
- f. It is in the interest of justice that this application be granted.

Representation and hearing.

The applicant is represented by Mr. Brian Tandeka. The respondent is represented by Counsel Harriet Adubango, the State Attorney. Both Counsel filed written submissions which I have considered herein.

Consideration by Court

A person accused of criminal offences has a right to apply for bail. However, the grant of bail is at the discretion of court **(See Articles 23 (6) (a) and 28 (3) of the Constitution of the Republic of Uganda, Uganda Vs Kiiza Besigye; Const. Ref No. 20 of 2005).**

While exercising its discretion to grant of bail, Court takes into consideration, among others, the gravity of the offence and the likelihood of the applicant to attend court. Court is required by the **Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2021 Paragraph 12** to consider the following before granting bail;

- a) The gravity of the offence;
- (b) The nature of the offence;
- (c) The antecedents of the applicant so far as they are known;
- (d) The applicant's age, physical and mental condition;
- (e) The likelihood of the applicant to attend court

In the instant case, the applicant is charged with aggravated defilement which is by all means grave. Nonetheless, I am cognizant of the fact that every person who is charged with a criminal offence is presumed to be innocent until proven guilty or until that person has pleaded guilty (***see Article 28(3)(a) of the Constitution of the Republic of Uganda 1995***).

The law stipulates that to be released on bail, the applicant must prove to the satisfaction of the court an exceptional circumstance (***see section 15(3) of the Trial on Indictments Act, Florence Byabazaire vs Uganda High Court Misc. Application No. 284 of 2006***).

Under **paragraph 14 (2) of the Constitution (Bail Guidelines For Courts Of Judicature) (Practice) Directions, 2022**, exceptional circumstances may include; grave illness certified by a medical officer of the prison or other institution or place where the applicant is detained as being incapable of adequate medical treatment while the applicant is in custody; a certificate of no objection signed by the Director of Public Prosecutions; and the infancy or advanced age of the applicant.

In the instant case, however, the applicant has not presented any exceptional circumstances as a ground for this application.

This court, of course, has in the exercise of its overall jurisdiction, powers to grant bail, even in the absence of an exceptional circumstance being proved. Court does so through the judicial exercise of its discretion. The test this court has set is that: ***“The burden is upon the applicant to satisfy court by putting forth before court a set of facts, beyond the ordinary considerations for bail, upon which the court can act, in the exercise of its discretion, to admit the applicant to bail” (See: High Court of Uganda at Gulu Miscellaneous Application Number 0037 of 2008)***

In ***Obey Christopher & 2 others Vs Uganda, ACD Miscellaneous Application Nos. 045,046 and 047/2015***, my learned sister Hon. Lady Justice Margret Tibulya noted that the court must deal with the possibility of the applicant failing to return for his trial if granted bail. Court must look at several factors depending on the circumstances of each case including but not limited to the gravity of the offence, the likely penalty in the event of conviction, whether the applicant has a known and permanent address and the quality of sureties presented.

The counsel for the applicant submitted that the applicant has a permanent place of residence and substantial sureties who reside within this court’s jurisdiction. Counsel for the respondent is opposed to the substantiality of the sureties given that some have no relationship with the applicant and others are younger than the applicant himself. These sureties, who also appeared before this court, include:

- a. Irumba John, aged 64 years and LC1 chairperson of Kabagona Village. He is a resident of Kabagona Village, Kyezi Parish, Mugusu Sub-County, Kabarole district. His introduction letter, phone number

and a copy of his National Identity Card have also been received on record.

- b. Pastor Mbeyarra Vicent aged 48 years, a neighbour to the applicant and a resident of Kabagona Village, Kyezire Parish, Mugusu Sub-County, Kabarole district. His introduction letter, phone number and a copy of his National Identity Card have also been received on record.
- c. Tusiime Resty aged 36 years, and a resident of Kabagona Village, Kyezire Parish, Mugusu Sub-County, Kabarole district. His introduction letter, phone number and a copy of his National Identity Card have also been received on record.
- d. Gumusiriza George William aged 42 years, and a resident of Kabagona Village, Kyezire Parish, Mugusu Sub-County, Kabarole district. His introduction letter, phone number and a copy of his National Identity Card have also been received on record.

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.91** opined:

“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.”

Hon. Lady Justice Florence Nakacwa quoting **Halsbury’s laws of England 4th Edition Vol Ii page 112-112 paragraph 166** in the case of **Sher Sign Shekhawat Vs Uganda Cri Misc App No 11 of 2023** explained the role of sureties 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.”

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.

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.

In the present application, the applicant has presented 4 sureties, one is the LC1 chairperson of his village, the other is a pastor, and the other two are residents of the applicant's village.

Apart from the LC1 chairperson, the remaining three sureties are younger than the applicant, casting doubt on their ability to ensure his court attendance. Additionally, there is no evidence indicating the sureties' financial capacity to cover the potential court bond. Overall, I am not

convinced that the sureties are sufficient, and in a position to compel the accused to attend trial whenever required.

The absence of substantial sureties poses a possible flight risk if the applicant is granted bail, and the court is not satisfied that the applicant would appear to attend his trial when required.

In the premises, this application is dismissed, and bail is accordingly denied.

Given that the applicant has already been committed to High Court for trial, the Deputy Registrar shall cause list the case for hearing in the next criminal session.

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

A handwritten signature in dark ink, appearing to read 'Mugabo', with a stylized initial 'V'.

Vincent Emmy Mugabo
Judge