



- c. Before his arrest, the applicant was battling with Tuberculosis, a grave illness that has the potential to spread to other inmates.
- d. The prison in charge recommended the applicant go to a better facility for further management.
- e. This honourable court has jurisdiction to grant the bail application.
- f. That the applicant has no previous criminal record, and he is of good character, and well known to the local leaders where he is residing.
- g. That the applicant has a fixed place of abode at Rwenkuba Cell, Rutooma ward, Rwentuha Town Council in Bushenyi district where he stays with his family and that's where he can be traced if released on bail.
- h. That the applicant has substantial sureties who shall compel him to attend court whenever required.
- i. The applicant verily believes in his innocence and that he is constitutionally presumed to be innocent.

### **Representation and hearing.**

The applicant is represented by Counsel Mishele Geofrey of M/S Bagyenda & Co. Advocates. The respondent is represented by Robert Arinaitwe, State Attorney. The respondent did not file a response to the application. Counsel for the applicant filed written submissions which I have considered herein.

### **Consideration by court**

According to **Articles 23 (6) (a) and 28 (3) of the Constitution** of the Republic of Uganda, persons accused of criminal offences have a right to

apply for bail. However, the grant of bail is discretionary to the court (see ***Uganda Vs Kiiza Besigye Const. Ref No. 20 OF 2005***).

Counsel for the applicant submitted that the applicant has a permanent place of residence and substantial sureties in the court's jurisdiction. These are;

- a. Tugabirwe Lovelyne, 36 years old, the applicant's wife. She is a resident of Rwenkuba Cell, Rutooma ward, Rwentuba Town Council in Bushenyi district. Her introduction letter, phone number and a copy of his National Identity Card have also been received on record.
- b. Tukamuhebwa Obed, 35 years of age and the applicant's cousin's brother. He is a resident of Kamulikwizi Cell, Nyamwamba Division, Kasese Municipality in Kasese District. His introduction letter, phone number and a copy of his National Identity Card have also been received on record.
- c. Nabaaza Naboth, 41 years of age and the applicant's friend. He is a resident of Nyabutobo Cell, Rutoma Ward, Rwentuha Town Council, in Bushenyi district. He is also the LC III chairperson of Rwentuha Town Council. His introduction letter, phone number and a copy of her National Identity Card have also been received on record.
- d. Mwesigye Edson, 40 years of age and a cousin brother to the applicant. He is a resident of Town Centre Cell, Town Centre Ward, Central Division, Kasese 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 (3<sup>rd</sup> 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 4<sup>th</sup> Edition Vol Ii page 112-112** paragraph 166 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 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.

Although this court notes that the applicant has no permanent residence within the jurisdiction of the court, his home being in Bushenyi district, he has presented substantial sureties to guarantee that the applicant will attend his trial when called upon. The first surety is his wife with whom they stay together in Bushenyi district while the 3<sup>rd</sup> surety is the LC III chairperson of the Rwentuha Town Council where the applicant has a permanent residence. The 2<sup>nd</sup> and 4<sup>th</sup> sureties are cousin brothers who have permanent residence within the jurisdiction of this court.

There is no evidence presented to this court that there are other criminal charges pending against the applicant. I also note that he has been on remand since December 2022.

While considering an application for bail, Court is required by the **Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2021 Paragraph 12** to consider, among others, the following before granting bail; the gravity of the offence; the nature of the offence; the antecedents of the applicant so far as they are known; the possibility of a substantial delay of the trial; the applicant's age, physical and mental condition.

The applicant is charged with aggravated trafficking in children C/S 3(1)(b) and 5(a) of the Trafficking in Persons Act 2009, an offence which is by all standards 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 HCMA 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 application, the applicant presented a medical report signed by the In-charge Mubuku Prison Health Centre II stating that the applicant has Tuberculosis with numbness on one side, visual complications, and metabolic disorders, and recommended that the applicant be taken to a better facility for further management (***see annexure A of the affidavit in support of the application***). I am inclined to believe that the medical condition of the applicant presents an exceptional circumstance that justifies the grant of bail.

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 Misc. App. No. 0037 of 2008).***

It is trite that bail is an important judicial instrument to ensure individual liberty and the main reason for granting bail is to ensure that the applicant appears to stand trial without the necessity of being detained in custody in the meantime. The effect is to release him from physical custody while he remains under the jurisdiction of the law and is bound to appear at the appointed place and time to answer the charge against him.

I am satisfied with the set of sureties that the applicant presented in court as persons capable of guaranteeing the applicant's attendance of the trial when the case is eventually fixed for trial. I am also convinced that the applicant's medical condition presents an exceptional circumstance that justifies the grant of bail. In the circumstances, I do find merit in the application and hereby order the applicant to be released on bail on the following terms:

- i. The applicant is to execute a cash bond of UGX 2,000,000/=
- ii. Each of the sureties is to execute a non-cash bond of UGX 10,000,000/-
- iii. 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 and to the officer in charge of criminal investigations at Kasese Central Police Station on the last Friday of every month until the commencement of his trial or further orders of the court.

This cash will be refunded in accordance with **Paragraph 26 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022.**

In the circumstances, 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.

Dated at Fort Portal this 23<sup>rd</sup> day of October 2023.

A handwritten signature in black ink, appearing to read 'Mugabo', written in a cursive style.

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**Vincent Emmy Mugabo**  
**Judge**