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The Republic of Uganda

In The High Court of Uganda Holden at Soroti

Criminal Miscellaneous Application No. 0029 of 2022

(Arising from Criminal Case No. CRC NO. AA-11/2020)

10 Okurut David Applicant

Versus

Uganda Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

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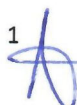
Ruling

This is an application brought by way of notice of motion under Articles 2(1), 23(6)(a) & 28 (1)(3) of the Constitution of Uganda 1995, Sections 14 and 15 (1)(b)(c) Trial on Indictment Act Cap. 23 and Rules 2 & 4 of the Judicature (Criminal Procedure) Applications) Rules S.I 13-8 for orders
20 that;

1. The applicant now on remand at Soroti Prison be released on bail pending his trial upon such conditions as this Honourable Court shall deem fit.

2. Costs of this application be provided for.

25 The grounds of the application as set out in the application and further expounded in the supporting affidavit briefly are that the applicant was charged with rape and has a constitutional right to be released on bail. That he has a fixed place of abode and will not abscond if released on bail.

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5 The applicant has substantial sureties who will abide by the conditions set by this court.

The respondents were dully served with the application as proven by the affidavit of service on record however no reply was made.

The submissions by counsel for the applicant M/s Ewatu & Co. Advocates
10 have been read and dully considered.

The law on bail pending trial;

Article 28(3)(a) of the Constitution provides that;

**“Every person who is charged with a criminal offence shall— (a) be presumed to be innocent until proved guilty
15 or until that person has pleaded guilty.”**

Article 23(6)(a) of the Constitution provides;

“Where a person is arrested in respect of a criminal offence—

**(a) the person is entitled to apply to the court to be
20 released on bail, and the court may grant that person bail on such conditions as the court considers reasonable;”**

Section 14(1) of the Trial on Indictment Act provides thus;

**“The High Court may at any stage in the proceedings
25 release the accused person on bail, that is to say, on taking from him or her a recognisance consisting of a bond, with or without sureties, for such an amount as is reasonable in the circumstances of the case, to appear before the court on such a date and at such a time as is named in the bond.”**

5 Section 15(1) of the Trial on Indictment Act provides thus;

“Notwithstanding section 14, the court may refuse to grant bail to a person accused of an offence specified in subsection (2) if he or she does not prove to the satisfaction of the court—

10 **(a)that exceptional circumstances exist justifying his or her release on bail; and**

(b)that he or she will not abscond when released on bail.”

Section 15(3) provides;

15 **“In this section, “exceptional circumstances” means any of the following—**

(a)grave illness certified by a medical officer of the prison or other institution or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody;

20 **(b)a certificate of no objection signed by the Director of Public Prosecutions; or**

(c)the infancy or advanced age of the accused.”

Section 15(4) provides

25 **“In considering whether or not the accused is likely to abscond, the court may take into account the following factors—**

(a)whether the accused has a fixed abode within the jurisdiction of the court or is ordinarily resident outside Uganda;

5 **(b)whether the accused has sound sureties within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail;**

(c)whether the accused has on a previous occasion when released on bail failed to comply with the conditions of his or her bail; and

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(d)whether there are other charges pending against the accused.”

Article 23 (6) (a) of the Constitution gives accused persons the right to apply for bail however, the grant of bail is discretionary to the court.

15 The basic principle for which a court may release an applicant on bail is the presumption of innocence. This legal principle is enshrined under Article 28(3) (a) Constitution of the Republic of Uganda, 1995.

This Application was brought under Article 23(6) (a) of the Constitution of the Republic of Uganda which provides;

20 **“...where a person is arrested in respect of a Criminal Offence, he is entitled to apply to the Court to be released on bail and Court may grant that person bail on such conditions as Court considers reasonable.”**

Further, Article 28 (3) (a) of the Constitution of the Republic of Uganda provides that,

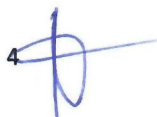
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“...every person who is charged with a criminal offence shall be presumed innocent until proved guilty or until that person has pleaded guilty...”

This position is clarified by Section 14 of the Trial on Indictment Act which states;

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5 **“...a court may at any stage of the proceedings release the
accused person on bail, on taking from him or her a
recognizance consisting of a bond with or without
sureties, for such an amount as is reasonable in the
circumstances of the case, to appear before the Court on
10 such a date and at such a time as is named in the bond...”**

The Constitution (Bail Guidelines for Courts of Judicature) Practice) Directions, 2022, No. 5 reinforces the above legal positions by providing the general principles which a court may take into account while considering a bail application while being guided by relevant principles as
15 enshrined in the Constitution of Uganda.

These principles are;

- a) The right of an applicant to be presumed innocent as provided for in article 28(3) of the Constitution;
- b) The applicant's right to liberty as provided for in article 23 of the
20 Constitution;
- c) The applicant's obligation to attend trial;
- d) The discretion of the court of the court to grant bail on such terms and conditions as the court considers reasonable; and
- e) The need to balance the rights of the applicant and the interest of
25 justice.

Arising from all the above it is trite to conclude that while an accused person has the right to apply for bail by virtue of Article 23 (6) (a) and 23 (3) of the Constitution of the Republic of Uganda, the court has the singular unfettered discretionary powers to grant the same as was held in
30 Uganda v Kiiza Besigye; Constitutional Reference No. 20 of 2005.

5 Additionally, and pursuant to Sections 14 and 15 of the Trial on
Indictments Act, a person indicted of a serious offence can be stated to only
be able to be released on bail if he or she proves to the satisfaction of the
court that special circumstances do exist to warrant his or her being
released on bail. These circumstances which are regarded "special"
10 include grave sickness, infancy or old age, the fact that the applicant has
been on remand for over 12 months before committal for trial as per
Article 23(6)(c) of the Constitution and that the state does not oppose the
applicant being released on bail.

Proof of these circumstances nonetheless is not mandatory as the courts
15 have the discretion to grant bail even where none is proved.

The special circumstances are no longer regarded as a required for release
of an accused person charged with a capital offence to be released on bail
for Section 15 (1) (a) of the Trial on Indictment Act, which provides for
these special circumstances was held to be in contravention of the
20 constitutional right to apply for bail.

See: ***Foundation for Human Rights Initiative vs. Attorney General, Constitutional Petition 20/2006.***

Besides under Article 28(3) of the Constitution of the Republic of Uganda,
every person is presumed innocent until proved guilty or pleads guilty.

25 Consequently, an accused person should not be kept on remand
unnecessarily without trial and must also not be deprived of his/her
freedom unnecessarily or denied bail as a punishment where he or she has
not yet been proved guilty by a competent court of law.

See: ***Tumwirukirire Grace v Uganda; Miscellaneous Criminal***
30 ***Application 94 of 20190 [2020]***

5 The principle of protection of personal liberty was concreted in the case of
Col (Rtd) Dr. Kiiza Besigye v Uganda Criminal Application
No.83 of 2016 wherein Masalu Musene, J held that;

10 “...court has to consider and balance the rights of the
individual, particularly with regard personal
liberty...The active principle in granting bail is that of
upholding the liberty of the individual, while
simultaneously protecting the administration of justice.”

Also See: ***Abindi & Another v Uganda; Miscellaneous Criminal***
Application 20 of 2016 [2017]

15 Accordingly, an accused person should be granted bail if he or she fulfils
the set conditions for his/her release, has a fixed place of abode, has sound
sureties capable of guaranteeing that he will comply with the conditions
of his or her bail and is willing to abide by all other conditions set by the
court.

20 However, in all cases the court must have in its mind the overarching
consideration of the gravity of the accusation levelled against an applicant
and that should never be ignored.

The applicant in his affidavit states that he has been on remand since
February 2020 and though he has been committed for trial to the High
25 Court the period of this trial is not known making his stay on remand
uncertain.

The applicant then states that he as a fixed place of abode at Kateri village,
Koena Parish, Koena Sub-county in Bukedea District which is within the
jurisdiction of this court. An introductory letter was attached to the
30 application stating that he is a true resident of this area. With no evidence

5 to the contrary I find that the applicant has proved that he has a fixed place of abode.

The applicant presented two sureties to this court that is, his father Onyait David aged 65 years and his uncle Odwar Ignatius aged 68 years both residents of Kateri Village, Koena parish, Koena Sub-county in Bukedea District. Introductory letters by the Lc1 of this area were and copies of
10 their voter's IDs were attached to this effect.

Counsel for the applicant submitted that he explained to the sureties their roles and duties which they understood and that furthermore both sureties have control over the applicant and will ensure compliance with
15 bail terms and conditions by the applicant. With nothing proving the contrary I find that the sureties produced before this court are substantial and understand their duty not only to this court but the applicant as well.

While the offence of rape is serious and carries a maximum sentence of death, it still remains the law that an accused is presumed innocent until
20 proven guilty.

This Honourable Court further notes that the applicant has shown that he has a fixed place of abode within the jurisdiction of this court at Kateri village, Koena Parish, Koena Sub-county in Bukedea District and he is more likely than not going to abscond his trial when released on bail. This
25 he has done so by providing an introductory letter from the local government authorities of Local Council 1 at Kateri village, Koena Parish, Koena Sub-county in Bukedea District where he is stated to reside.

He has also presented his national identity card, which is a government document and it is attached to his affidavit which document provides for
30 certain his identification in tangible details.

- 5 Furthermore, this Honourable Court is also aware that though the applicant has already been committed for trial in the High Court no hearing date for the offence for which he is charged with is yet to be fixed, an indication that there is a high probability of a delay to be experienced before the applicant/accused can be tried.
- 10 In the case of Foundation for ***Human Rights Initiative vs. Attorney General Constitutional Petition No. 020 of 2006***, it was held that the nature of the offence, antecedents of the applicant and the fact of whether an applicant has a fixed place of abode in court's jurisdiction should be strongly considered by court in an application for bail.
- 15 Since there is no objection as to the sureties, the applicant has fixed place of abode nor to the antecedents of the applicant, I would conclude that all these requirements are not in dispute.

In ***Uganda vs Col. RTD Dr Kiiza Besigye Constitutional Reference No. 20 of 2005***, it was held that the court should while
20 considering a bail application balance the constitutional right of an applicant and the need to protect society from lawlessness.

The applicant has presented two sureties to this court that is, his father Onyait David aged 65 years and his uncle Odwar Ignatius aged 68 years both residents of Kateri Village, Koena parish, Koena Sub-county in
25 Bukedea District. Introductory letters by the Lc1 of this area were and copies of their voter's IDs were attached to this effect. These sureties are considered substantial and they have undertaken to ensure that he attends his trial. He has also indicated that he has a fixed place of abode within the court's jurisdiction.

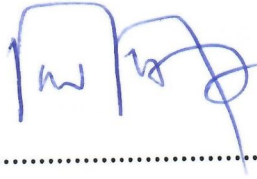
- 30 My assessed conclusion is that sound merit has been shown in respect to this application.

- 5 On the basis of the evidence put forward, court is satisfied that this is a case where it should exercise its discretion and grant bail to the applicant, especially given the uncertain term of remand and the applicant's frail health and age.

Bail is accordingly granted on the following conditions;

- 10 a. By taking from the Applicant, a recognizance consisting of Uganda Shillings One Million only (UGX1,000,000) CASH.
- b. The Applicant to present his original national identity card together with its two certified copies, one copy of which shall be kept in this file by the Registrar of this court and the other kept by the Chief
15 Resident State Attorney, on behalf of the respondent.
- c. The Applicant shall also deposit on record two (2) recently taken (black and white) passport size photos (One to be attached to this file and the other kept by the Chief Resident State Attorney).
- d. The Applicant to report to the Registrar of this Court, in person,
20 once every month commencing on 6th February, 2023.
- e. Each of the approved sureties shall each deposit on record two (2) recently taken (black and white) passport size photos (One to be attached to this file and the other kept by the Chief Resident State Attorney) and shall in addition sign a non-cash bond of Uganda
25 Shillings Five Million only (UGX. 5,000,000/=).
- f. Any failure to adhere to these conditions shall lapse the bail terms above resulting into an automatic issue of a Warrant of Arrest against the Applicant and the cancellation of his bail in addition to the sureties to both being required to pay to the state the non-cash
30 bond of Uganda Shillings Five Million only (UGX. 5,000,000/=) above.

5 I so order accordingly at the Soroti High Court Circuit, this 6th day of
January, 2023

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a dotted line.

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Hon. Justice Dr. Henry Peter Adonyo

Judge