

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO
CRIMINAL MISC. APPLICATION NO. 71 OF 2022
(ARISING FROM COURT CRIMINAL CASE NO. AA 08 OF 2022,
MUKONO SEETA CRB 576 OF 2021)

- 1. UWACU BUSHESHI JEANNE**
FRANCOISE DE CHANTAL
2. CYURISHEMA RUSARO
JASPE DEBORAH alias MIMI :..... APPLICANTS

VERSUS

UGANDA :..... RESPONDENT

BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA

RULING

1. The Applicants instituted this application by Notice of Motion seeking for an order that the Applicants be released on bail pending the commencement of their trial. The application was brought under the provision of Articles 23 (6) (a) of the Constitution of the Republic of Uganda, 1995, section 14 (1) of the Trial on Indictments Act, Cap. 23 and Rule 2 of the Judicature (Criminal Procedure) (Application) Rules, S.I 13-8.

2. The brief grounds of the application are contained in the Notice of Motion and supported by the Applicants' affidavits dated 21st September, 2022, The grounds were that:

(a) on 15th December, 2021, the 1st Applicant handed over herself to the Police Headquarters at Kibuli where she was arrested and detained at Jinja Road Police Station until the 20th January, 2022;

(b) on the 8th December, 2021, the 2nd Applicant was arrested and detained at Seeta Police Station and later transferred to Jinja Road Police Station until the 20th January, 2022;

(c) the Applicants were arraigned before the Chief Magistrate's Court of Mukono at Mukono, remanded and later committed to the High Court on the 1st July, 2022, with the offences of murder c/s 188 and 189 of the Penal Code Act, Cap. 120 and conspiracy to commit a felony c/s 390 of the Penal Code Act, Cap. 120;

(d) the Applicants were indicted based on Police Seeta CRB No. 492 of 2021 in respect of a case of aggravated robbery against a one Okello Phillip contrary to the case brought against them vide Seeta CRB 576 of 2021;

(e) the 1st Applicant has been in detention for 9 months for a crime she did not commit but only suspected for killing her husband because of money yet he was her employee holding a work permit under her company called Cible Employment Limited which is a single member company;



- (f) the 2nd Applicant has been in detention for 9 months for a crime she did not commit but merely suspected for killing her sister's husband;
- (g) the 1st Applicant is a mother of two children namely Aayan Kumar aged 7 years and a girl child Avni Kaur aged 11 years currently under the care of spiteful men who sold off her properties, took over monies belonging to her company, froze her company account and denied her relatives access to her children who are in need of her care as their only remaining parent;
- (h) the Applicants have a permanent place of abode at Kiwanga Lwanda Cell Administrative Unit L.C.1, Goma Division, Mukono Municipality in Mukono where they shall stay when released on bail by this honourable court;
- (i) the Applicants shall not interfere with police investigations since the same are complete;
- (j) the Applicants shall not interfere with state witnesses whom they do not know;
- (k) the Applicants shall not jump bail or abscond if released on bail since they shall abide by all the terms and conditions set by this honourable court and ensure that they attend court to prove their innocence;

- (l) the Applicants were briefed on the meaning of being released on bail by their lawyers from M/s F. Aogon & Co. Advocates which they understood so well and shall not fail at any one moment to attend court whenever required;
- (m) the Applicants have substantial and sound sureties willing to stand surety for them and are ready to observe all the bail conditions set by this honourable court;
- (n) the Applicants have no pending charges against them in any court or courts of law and they have never been charged or convicted of any criminal offence before and they are ready to surrender their passport to this honourable court; and
- (o) it is fair and just that this court intervenes and makes orders for the Applicants' release on bail pending the disposal of the criminal charges brought against them.
3. On 20th February, 2023, the Respondent filed an affidavit in reply sworn by Nanyonga Josephine, a State Attorney. The Respondent opposed the application on the grounds that:
- (a) the L.C.1 letter attached by the Applicants to their affidavits doesn't clearly prove whether they are permanent residents or not and the Applicants have not proved whether they rent in this area and have not attached either their water or electricity bill to prove this;

- (b) the Applicants aver that they are Rwandese nationals but have not attached any documents like copies of their national identification cards or passport to prove this;
- (c) the 2nd Applicant presented one of the sureties, Sanjeer Kumar who she avers to be her husband, however, he is not a citizen of Uganda and is not substantial and might not take up his responsibility as a surety; and
- (d) the Applicants are charged with an offence which is grave in nature and since they are not citizens of this country, there is a high likelihood of absconding from bail.
4. Both parties filed their written submissions. When the application came up for hearing on the 20th February, 2023, the Applicants were represented by Counsel Kakande Edward from M/s F. Aogon & Co. Advocates. The Respondent was represented by Counsel Nanteza Victoria Anne, State Attorney from the Office of the Director of Public Prosecutions.

Issue

Whether the Applicants are entitled to be granted bail.

5. The Applicants' counsel submitted that the reasons contained in the grounds of the application and the supporting affidavits of the Applicants are enough as provided by the law. He prayed that this honourable court in its discretion find it just to grant this application and the Applicants be released on bail. Counsel cited Directive II of the Bail Guidelines, 2022 on the requirements for bail.

6. Learned counsel further contended that the Applicants are ready to hand over their passport which are in police custody and that they have attached their introduction letters from the Chairperson L.C.1 and have provided reasonable grounds for their release on bail. It was further averred for the Applicants that the case of **Kayongo Bashir v. Uganda, Misc. Application No. 158 of 2019**, emphasized on the presumption of innocence and showed that the court's duty is not to act on allegations, fears or suspicions. That the court in that case further noted that the onus is to prove a permanent place of abode and not to produce titles, prove ownership of the property and produce utility bills.

7. Besides, the Applicants' counsel stated that the sureties are responsible persons who will ensure that the accused return to court to stand trial. At the hearing of the application, counsel presented three sureties for the 1st Applicant and four (4) sureties for the 2nd Applicant. The sureties were:

(a) Mr. Lugoloobi Hamidu, 40 years old, a friend of the 1st Applicant for now 7 years, an advocate employed as a Senior Legal Officer with Uganda Electoral Commission, resident of Taawo Village L.C.1, Katwe II Ward, Makindye Division, Kampala City with mobile telephone No. 0772 348296 / 0758 769219;

(b) Mr. Busingye John, 49 years old, a friend of the 1st Applicant for now 10 years, a farmer doing commercial farming, resident of Masanyalaze Zone L.C.1, Najja II Parish, Rubaga Division,



Kampala City, with mobile telephone No. 0776 804088 / 0705 332552;

- (c) Ms. Nakimuli Mmiche, 42 years old, a family friend of the 1st Applicant who has known her for 6 years, a financial analyst with 24 Securities, resident of Namugongo Bulooli Cell, Kyaliwajjala Ward, Namugongo Division, Kira Municipality, Wakiso District, with mobile telephone No. 0700 445830 / 0782 980260;
- (d) Mr. Namanya Christopher Davis, 52 years old, a friend of the 2nd Applicant who has known her for 7 years, an Election Officer working with Electoral Commission for now 20 years, resident of Nazareth Zone, Kyanja Parish, Nakawa Division, Kampala City;
- (e) Ms. Nakafeero Hanifa, 42 years old, a friend and neighbor of the 2nd Applicant, a house wife, resident of Kiwanga Lwanda Cell Administrative Unit L.C.1, Goma Division, Mukono Municipality, Mukono District, with mobile telephone No. 0751 838301 / 0708 348836;
- (f) Ms. Ampaire Leah, 28 years old, a friend of the 2nd Applicant and Yoga Instructor of the children of the 1st Applicant, resident of Nazareth Zone, Kyanja Parish, Nakawa Division, Kampala City, with mobile telephone No. 0776 245462; and
- (g) Ms. Aleni Robinah, 29 years old, who has known the 2nd Applicant for 5 years, a social worker but self-employed as a business woman running a pharmacy called MARIA MEDICAL CENTRE in



Kireka, resident of Ntebetebe Cell, Bweyogerere Ward,
Bweyogerere Division, Kira Municipality, Wakiso District, with
mobile telephone No. 0777 294715/0701 786368.

8. The national identity cards of all the seven (7) sureties as well as introductory letters from their area Local Council Chairpersons were presented before this court as evidence. The Applicants' counsel prayed that the Applicants with court's discretion be released on bail for justice not only to be done but also to be seen to be done especially where there are errors in the indictments. The Applicants' counsel informed court that the 1st Applicant does not know the whereabouts of her children and she has lost her business in the hands of the complainants.
9. On the other hand, the Respondent's counsel submitted that the Applicants averred that they are Rwandese nationals but they have not given their clear and proper places of abode to guarantee their return for trial. Counsel referred to the cases of **Aganyira Albert v. Uganda, Criminal Miscellaneous Application No. 0071 of 2013** and **Uganda v. Col. Dr. Kiiza Besigye, Constitution Reference No. 20 of 2005**.

Court's consideration

10. From the onset, I would like to clarify that the Applicants' claim of error on the indictments is not a matter to be dealt with in this application. It would be properly tackled during the trial of the accused persons where the trial court will decide on the gravity of the error. The

issue at hand is whether the Applicants should be released on bail and not to decide on the merits of the main criminal case.

11. The right to bail is a fundamental right guaranteed under Article 23 (6) of the Constitution of the Republic of Uganda, 1995 as amended. It provides thus:

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

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

(b) in the case of an offence which is triable by the High Court as well as by a subordinate court, the person shall be released on bail on such conditions as the court considers reasonable, if that person has been remanded in custody in respect of the offence before trial for sixty days;

(c) in the case of an offence triable only by the High Court, the person shall be released on bail on such conditions as the court considers reasonable, if the person has been remanded in custody for one hundred and eighty days before the case is committed to the High Court."

12. The main purpose of bail is to uphold one's right to personal liberty. This is premised on the presumption of innocence stipulated under Article 28 (3) of the Constitution of the Republic of Uganda, 1995. A bail Applicant must not be deprived of his or her freedom



unreasonably or as a punishment where they have not been proved guilty by a competent court of law.

13. In the case of **Abindi Ronald & Anor v. Uganda, High Court Miscellaneous Criminal Application No. 0020 of 2016**, Justice Stephen Mubiru stated that:

“Under Article 28 (3) of the Constitution of the Republic of Uganda, every person is presumed innocent until proved guilty or pleads guilty. Consequently, an accused person should not be kept on remand unnecessarily before trial.”

14. As to the gravity of the offences with which the Applicants are charged, the fact that the Applicants are indicted with the offence of murder which carries maximum sentence of death is not by itself a bar to their release on bail if they satisfy all the requirements. The law still presumes the Applicants innocent until proved guilty or until they plead guilty. It is therefore not right for this court to act on fears and allegations of the possibility of abscondment if one is granted bail.

15. Section 14 (1) of the Trial on Indictments Act, Cap. 23 provides for the court's discretionary powers to grant bail and the conditions under which bail is to be granted are contained under section 15 of the Trial on Indictments Act. These circumstances are broken down to proof of exceptional circumstances like grave illness, a Certificate of no objection from the Director of Public Prosecution, infancy or advanced age; and the fact that the accused will not abscond to be proved by the accused having a fixed place of abode, sound sureties,

among others. In **Abindi Ronald & Anor v. Uganda**, (supra) Justice Stephen Mubiru said that:

“An applicant should not be incarcerated if he has a fixed place of abode, has sound sureties capable of guaranteeing that he will comply with the conditions of his or her bail.”

16. In the instant case, the Applicants who claimed to be Rwandese citizens presented the L.C.1 introductory letter to prove their fixed places of abode. However, the said letter merely states that the Applicants are residents who stay within the area but does not state anywhere therein that they are permanent residents of Kikwanga Lwanda Cell Administrative Unit L.C.1.

17. In the case of **Mugyenye Steven v. Uganda, High Court Criminal Misc. Application 65/2004**, Justice Remmy K. Kasule (as he then was) held that:

“The onus of proof is on the Applicant to satisfy court that he has a permanent place of abode in a particular known Village, Sub-County, County and District.”

I find that the Applicants have not proved to the satisfaction of this court that they have fixed places of abode within this court’s jurisdiction.

18. Paragraph 12 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, Legal Notice No. 8 of 2022, provides thus:

“An application for bail shall contain the particulars of the applicant, accompanied by –



(a) a copy of the applicant's national identity card, or passport or aliens identification card or employment card or student identity card;

(b) an introduction letter from the Local Council 1 chairperson of the area where the applicant resides;

(c) where applicable, asylum seeker or refugee registration document issued by the Office of the Prime Minister; and

(d) expounded grounds for the application."

19. In the instant case, the Applicants did not present to this court their Rwandese national identity cards or passports to support their claims of being Rwandese nationals. The Applicants' counsel submitted that the 2nd Applicant is a student who should be released on bail so that she joins university to study. However, no student's identity card was presented to court in support of such a submission. The Applicants stated in their affidavits that they are ready to surrender their passports to this honourable court.

20. Paragraph 12 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 is crystal clear as to stage at which such documents should appear on court's record. The word "**shall**" makes it a mandatory requirement for one of those documents to accompany the Applicant's application for bail together with other documents like introduction letter from the Local Council 1 chairperson prior to the Applicant's release on bail. Such identification documents assist court in determining whether to grant or deny bail. Therefore,



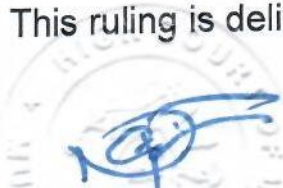
they are not to be presented after the Applicants' release on bail as submitted for the Applicants. This requirement has not been met by the Applicants.

21. The 1st Applicant presented three sureties and the 2nd Applicant has presented four sureties before this court. They are from three different districts of Kampala, Wakiso and Mukono. Except for Ms. Nakafeero Hanifa, a friend and a neighbor of the 2nd Applicant who claimed to be residing within the same village with the Applicants in Mukono, the rest of the sureties do not have any close proximity with the Applicants.
22. It is my view, it will be very difficult for these sureties to have supervisory power or control over the Applicants to ensure that they appear before court when required to do so. Moreover, this court is not certain about the nationality of the Applicants since there is no proof on court's record that they are Rwandese nationals as alleged.
23. Furthermore, since all the sureties have no close kinship relationship with the Applicants, in my judgment, the Applicants would not hesitate to breach conditions of bail to jeopardize their sureties who are just friends to them. For those reasons, this court finds all the sureties presented before it not substantial.
24. Pursuant to the foregoing analysis, I find no merit in this application and it is hereby dismissed. Each party shall bear their own costs of this application.



I so rule.

This ruling is delivered this 3rd day of March, 2023 by



FLORENCE NAKACHWA
JUDGE.

In the presence of:

- (1) Counsel Kakande Edward from M/s F. Aogon & Co. Advocates, for the Applicants;*
- (2) Counsel Nanteza Victoria Anne, State Attorney, for the Respondent;*
- (3) Ms. Uwacu Busheshi Jeanne Francoise De Chantal, the 1st Applicant;*
- (4) Ms. Cyurishema Rusaro Jaspe Deborah alias Mimi, the 2nd Applicant;*
- (5) Ms. Irene Lwantale, the Court Clerk.*