

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO**  
**CRIMINAL MISC. APPLICATIONS NO. 09 & 15 OF 2021**  
**(ARISING FROM CHIEF MAGISTRATE'S COURT OF MUKONO**  
**CRIMINAL CASES NO. 026 & 027 OF 2020)**

**1. AZIKI DAUDA**

**2. SSEKYEMA BASHIR ..... APPLICANTS**

**VERSUS**

**UGANDA ..... RESPONDENT**

**BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA**

**RULING**

1. These consolidated applications were instituted by Notice of Motion under Articles 2 (1), 23 (6) (a), 28 (3) and 139 (1) of the Constitution of the Republic of Uganda, 1995, sections 14 & 15 (1) (b) of the Trial on Indictments Act, Cap. 23, section 14 of the Judicature Act, Cap. 13 and Rule 2 of the Criminal (Procedure) (Applications) Rules, S.I 11-1. The applications seek for an order that the Applicants who are currently on remand at Kitalya Prison be released on bail pending trial in this honourable court.
2. The grounds of the application are briefly contained in the Notice of Motion and supported in detail by the Applicants' supporting affidavits dated 3<sup>rd</sup> March, 2022 and 25<sup>th</sup> March, 2022. The grounds were that:
  - (a) in the year 2020, the Applicants were produced before the Chief Magistrate's court of Lugazi at Lugazi together with the other



accused and charged with offence of murder c/s 188 & 189 of the Penal Code Act;

- (b) the Applicants together with the co-accused were on the 4<sup>th</sup> December, 2020 and March, 2021, committed to this court since the offences are triable by this honourable court;
- (c) the Applicants have constitutional rights to apply for bail at any stage in the proceedings and this honourable court is vested with jurisdiction to entertain bail applications from persons charged with offences triable only by the High Court;
- (d) the Applicants have high chances of success on their cases as the accusations against them are not true and they are ready and willing to stand trial of the charges against them and to abide by the bail terms when granted bail;
- (e) the Applicants have substantial sureties who are willing and able to stand surety for them who are residents within the jurisdiction of this honourable court;
- (f) the Applicants are the sole bread winners of their families and that the 1<sup>st</sup> Applicant has 2 wives and 16 children while the 2<sup>nd</sup> Applicant has 2 wives and 7 children who are still school going and that their continued stay in prison leaves them with no means of survival;
- (g) the Applicants have got exceptional circumstances that justify the grant of bail, to wit, the 1<sup>st</sup> Applicant is of advanced age of 52 years old with diabetes and kidney problems while the 2<sup>nd</sup> Applicant has HIV Aids, kidney problem and was urinating blood and that the Applicants will be unable to get proper medication since they have less access to it;
- (h) the 1<sup>st</sup> Applicant was getting his medicine from Jinja Main Hospital and St. Charles Lwanga in Buikwe District;





- (i) the Applicants have never been charged with any offence other than that which they stand charged with;
  - (j) the Applicants are not a threat to any process and are willing to appear before the High Court of Uganda for trial when required and their antecedents demonstrate their respect for the law and compliance with any bail conditions; and
  - (k) it is in the interest of justice if this honourable court grants bail to the Applicants and they are released accordingly.
3. The Respondent filed an affidavit in reply sworn by Nanteza Victoria Anne, a State Attorney from the Office of the Director of Public Prosecutions dated and filed in this court on 9<sup>th</sup> August, 2022. The grounds for opposing the application were that:
- (a) the Applicants have not adduced any proof before court to show that they are residents of Kizaala-Buganda & Najja L.C1 Villages, Kisimba Parish, Najja Sub-County, Buikwe District;
  - (b) the Applicants have not attached particulars of the sound and suitable sureties as alleged in this application guaranteeing their compliance with the conditions that may be imposed by this court for their bail;
  - (c) the Applicants did not provide evidence of a certificate from the medical officer of prisons where they are detained indicating that their respective medical conditions cannot be managed in the medical facilities in prison;



- (d) the Applicants have already been committed to this court and are due for trial and they know the nature of the evidence against them and are likely to interfere with the prosecution witnesses since they are well known to them; and
- (e) the offences with which the Applicants are charged with are serious in nature and carry maximum sentences of death upon conviction and this is likely to influence the Applicants to abscond trial.
4. Only the Applicants' counsel filed the Applicants' written submissions. During hearing of the application on 10<sup>th</sup> March, 2023, the Applicants were represented by Counsel Ssekatawa Alex from M/s Baganda, Ssekatawa & Co. Advocates. The Respondent was represented by Counsel Nanteza Victoria Anne, a State Attorney from the Office of the Director of Public Prosecutions.
5. The Applicants' counsel argued that this honourable court takes cognizance of the fact that applying for bail is a constitutional right as enshrined under Article 23 (6) (a) of the Constitution of the Republic of Uganda, 1995. That this court should take into consideration that proof of exceptional circumstances in an application for bail is not mandatory as was held in the case of **Rtd. Col. Dr. Besigye v. Uganda, Constitutional Reference No. 20 of 2005**.
6. Further, that in the instant case, the 1<sup>st</sup> Applicant stated that he is of advanced age being 52 years and he has diabetes and kidney problems while the 2<sup>nd</sup> Applicant stated that he has HIV Aids and





kidney problems and that he was urinating blood. That the Applicants' health conditions cannot be monitored in prison.

7. That the Applicants have fixed places of abode as stated in their affidavits and they need to be out of prison in order to solicit for funds for their families who are their dependents. Furthermore, learned counsel averred that the Applicants have never been charged with any offence such as the one for which they now stand charged with.
8. At the hearing of the application, the Applicants' counsel presented three (3) sureties for each Applicant. The 1<sup>st</sup> Applicant's sureties were:
  - (a) Mrs. Namaweje Eva, 38 years old, the 1<sup>st</sup> Applicant's wife, resident of Kizaala-Buganda L.C1 Village, Kisimba Parish, Najja Sub-County, Buikwe District, with mobile telephone No. 0756 471706;
  - (b) Mr. Balikooa Steven, 58 years old, the 1<sup>st</sup> Applicant's maternal uncle, a farmer, resident of Kizaala-Buganda L.C1 Village, Kisimba Parish, Najja Sub-County, Buikwe District, with mobile telephone No. 0754 237530; and
  - (c) Mrs. Nanteza Maria Donanta, 68 years old, the 1<sup>st</sup> Applicant's sister, a farmer, resident of Kizaala-Buganda L.C1 Village, Kisimba Parish, Najja Sub-County, Buikwe District, with mobile telephone No. 0773 125343.The 2<sup>nd</sup> Applicant's sureties were:



(a) Mrs. Nakisita Sulaina, 60 years old, the 2<sup>nd</sup> Applicant's biological mother, a farmer, resident of Najja L.C1 Village, Kisimba Parish, Najja Sub-County, Buikwe District, with mobile telephone No. 0708 609064;

(b) Mr. Musoke Edison Buyondo, 60 years old, the 2<sup>nd</sup> Applicant's paternal uncle, a farmer, resident of Najja L.C1 Village, Kisimba Parish, Najja Sub-County, Buikwe District, with mobile telephone No. 0773 067489; and

(c) Mrs. Oundo Topister, 63 years old, the Vice Chairperson of Najja L.C.1 Village and Secretary for persons with disabilities, resident of Najja L.C1 Village, Kisimba Parish, Najja Sub-County, Buikwe District, with mobile telephone No. 0755 386124.

9. The national identity cards of all the six (6) sureties and introductory letters from their area Local Council Chairpersons were presented before this court as evidence. The Applicants' counsel concluded that the Applicants have fulfilled the conditions for grant of bail and prayed that this honourable court grants them bail.

10. The Respondent's counsel orally submitted that the 2<sup>nd</sup> Applicant presented photocopies of the medical forms and no original forms have been shown to this court to prove their authenticity. Further, that there is no medical report from the prison's facility where the Applicants are being held, to prove that the diseases cannot be managed from there.





That the attached medical forms are not enough to prove that the Applicants suffer from the illness sought.

11. Learned counsel argued that the Applicants are charged with the offences of murder which carry maximum sentences of death. She prayed that since bail is not an automatic right, this court looks at what have been presented before it and make a decision as to whether the Applicants can be released on bail. The Respondent's counsel further prayed that if this court finds the sureties substantial, stringent terms be set to compel the Applicants to comply with the terms as well as to ensure that the sureties fulfill their responsibilities.
12. The Applicants' counsel rejoined that the fact that no medical report from the prison's facility was presented to this court did not take away the truth that the Applicants were suffering from the ailments they indicated in their affidavits. Counsel added that the Applicants are presumed innocent until proved guilty. He prayed that this court finds it fit to grant the Applicants bail and sets reasonable terms as the Applicants have been in prison for more than 2 years.

### **Issue**

**Whether the Applicants are entitled to be released on bail.**

13. Every accused person has a fundamental right to apply for bail as enshrined under Article 23 (6) of the Constitution of the Republic of Uganda, 1995, as amended. Article 23 (6) 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."*

14. Although the right to apply for bail is a constitutional right to every accused person, its grant is not a guarantee to every individual who seeks it. The High Court is empowered with the discretion to grant or refuse to grant bail in any case under sections 14 and 15 of the Trial on Indictments Act, Cap. 23. This discretion must however be exercised fairly and justly and each application is tackled on its own merits depending on the circumstances of a particular case. The court is expected not to deny bail merely as a punishment to the accused person as this would conflict with the presumption of innocence provided for in Article 28 (3) (a) of the Constitution which states that:





*“Every person who is charged with a criminal offence shall—*

*(a) be presumed to be innocent until proved guilty or until that person has pleaded guilty.”*

15. In the case of **Uganda v. Col (Rtd) Dr. Kiiza Besigye Constitutional Reference No. 20 of 2005** court laid out some general observations on the reasonable conditions the court should keep in mind when deciding to grant or to refuse to grant bail. It held that:

*“While considering bail, the court would need to balance the constitutional rights of the applicant, the needs of society to be protected from lawlessness and the considerations which flow from people being remanded in prison custody which adversely affects their welfare and that of their families and not least the effect on prison conditions if large numbers of unconvicted people are remanded in custody. In this respect various factors have to be born in mind such as the risk of absconding and interference with the course of justice...While the seriousness of the offence and the possible penalty which could be meted out are considerations to be taken into account in deciding whether or not to grant bail, the applicants must be presumed innocent until proven guilty or until that person has pleaded guilty. The court has to be satisfied that the applicant will appear for trial and would not abscond. The applicant should not be denied of his/her freedom unreasonably and bail should not be refused merely as a punishment as this would conflict with the presumption of*



*innocence. The court must consider and give the applicant the full benefit of his/her constitutional rights and freedoms by exercising its discretion judicially. Bail should not be refused mechanically simply because the state wants such orders. The refusal to grant bail should not be based on mere allegations. The grounds must be substantiated. Remanding a person in custody is a judicial act and as such the court should summon its judicial mind to bear on the matter before depriving the applicant of their liberty."*

16. I find the above extract very pertinent and relevant to the instant application given the nature and effect of the order sought by the Applicants. However, I take cognizance that the Applicants have been charged with very serious offences of murder. This calls for caution in granting such a release order.
17. In **Mugenyi Steven v. Uganda, Crim. Misc. Application 65/2004**, Justice Remmy K. Kasule 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. This is ~~purpose to enable court exercise jurisdiction over the Applicant while~~ on bail being able to trace his whereabouts whenever it is necessary.
18. In the instant case it was submitted for the Applicants that they have fixed places of abode at Kizaala-Buganda & Najja L.C1 Village, Kisimba Parish, Najja Sub-County, Buikwe District, where they reside with their wives and children. The L.C.1 letters from the area



Chairpersons dated 18<sup>th</sup> & 19<sup>th</sup> January, 2023 introducing the Applicants as residents of their areas were admitted in evidence. The Applicants' national identity cards also indicate the same. I find that the Applicants have satisfied this court that they have fixed places of abode within the jurisdiction of this Court. Besides no evidence has been adduced by the Respondent to the effect that the Applicants are ordinarily residents outside Uganda.

19. The Applicants have presented sureties who have been well identified before this court during hearing of the application with no objection from the Respondent. They are close family members of the Applicants that is to say; mother, maternal uncle, sister, wife and paternal uncle. The 6<sup>th</sup> surety is also a leader within the area of residence of the 2<sup>nd</sup> Applicant with authority over him hence this court is convinced that she can effectively preside over the 2<sup>nd</sup> Applicant to ensure that he complies with the bail terms. This court finds all the sureties substantial.

20. There are numerous authorities to the effect that in Uganda, a person of 50 years old is one of advanced age. (See the cases of **Andrew Adomora v. Uganda, High Court Criminal Misc. Application No. 9 of 1992** & **Francis Ogwang v. Uganda, High Court Criminal Misc. Application No. 25 of 2003**). Advanced age is recognized as an exceptional circumstance in terms of granting bail by courts in Uganda. However, under paragraph 4 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022



"advanced age" means sixty years of age and above. This is therefore the current position of the law as far as advanced age is concerned. The applicants in the instant case are below 60 years of age. The 1<sup>st</sup> Applicant is 54 years of age now and the 2<sup>nd</sup> Applicant is 40 years old now. They are therefore not of advanced age.

21. This court is not convinced with the medical forms attached by the Applicants to prove exceptional circumstances in terms of grave illness. Section 15 (3) (a) of the Trial on Indictments Act, Cap 23 and paragraph 14 (2) (a) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 are very clear on this and require grave illness to be 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 applicant is in custody. No certificate or report from a medical officer of the prison was presented before this court by the Applicants.

22. The main files attached to these applications indicate that the Applicants were already committed to this court prior to the filing of these applications. The Applicants were committed for trial on 1<sup>st</sup> October, 2020. This means that investigations in both cases were complete. Therefore, this court is hesitant to release the Applicants on bail since they were charged with others still at large. The Respondent should follow up the case and have it cause - listed for trial in the next criminal session.


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23. Pursuant to the foregoing, I find no merit in Miscellaneous Application No. 9 of 2021 and Miscellaneous Application No. 15 of 2021 and they are hereby dismissed. Each party shall bear their own costs of each application.

I so rule and order accordingly.

This ruling is delivered this ...22<sup>nd</sup> day of March, 2023 by



**FLORENCE NAKACHWA**  
**JUDGE.**

*In the presence of:*

- (1) Counsel Ssekatawa Alex from M/s Baganda, Ssekatawa & Co. Advocates, for the Applicants;*
- (2) Counsel Nanteza Victoria Anne, State Attorney, for the Respondent;*
- (3) Mr. Aziki Dauda, the 1<sup>st</sup> Applicant;*
- (4) Mr. Ssekyema Bashir, the 2<sup>nd</sup> Applicant;*
- (5) Ms. Pauline Nakavuma, the Court Clerk.*