

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO
CRIMINAL MISCELLANEOUS APPLICATION NO. 76 OF 2022
(ARISING FROM MUKONO CHIEF MAGISTRATE'S COURT CRIMINAL
CASE NO. AA. 32 OF 2022)

SENONO ERIA APPLICANT

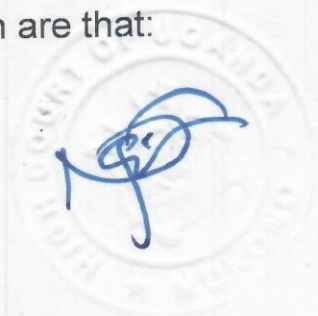
VERSUS

UGANDA RESPONDENT

BEFORE HON. JUSTICE FLORENCE NAKACHWA

RULING

1. This is an application for bail pending trial brought by notice of motion under Articles 6 (a), 43 (2) (b), 120 (5) and 250 (4) of the Constitution of the Republic of Uganda, 1995, sections 14 and 15 of the Trial on Indictments Act, Cap. 23, paragraphs 6, 7, 11 (2) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022, Rules 2 and 4 of the Judicature (Criminal Procedure) (Application) Rules, and other enabling laws of Uganda.
2. The application is supported by the Applicant's affidavit dated 21st August, 2023. The grounds for the application are that:



- (a) the Applicant is aged 47 years and a resident of Namubiru Village, Namubiru Parish, Nama Sub-County, Mukono District where he owns a permanent residence;
- (b) the Applicant was arrested on 29/3/2022 and later charged with the offence of aggravated defilement c/s 129 (3) & (4) (a) of the Penal Code Act, Cap. 120 vide Capital Criminal Case No. AA 32 of 2022;
- (c) the Magistrate before whom the Applicant appeared informed him that he had no jurisdiction to take his plea or entertain his bail application. Consequently, the Applicant was remanded to Murchison Bay Prison at Luzira prison pending his committal to the High Court for his trial to commence;
- (d) on the 16th day December, 2022, the Applicant was committed to this court for trial but it is now close to a year since his committal, yet no known date has been fixed for the commencement of his trial;
- (e) in mid-August 2023, the Applicant was transferred from Murchison Bay Prison to Nakasongola Prison in Nakasongola District;
- (f) in the year 2016, the Applicant lost his wife and he has been single handedly raising their eight (8) children including two (2) infants that is a girl aged 11 years and a boy aged 8 years with whom the Applicant stayed at the said residence;
- (g) since the Applicant's arrest and subsequent remand to prison in March 2022, his family especially the infants have been struggling



to acquire basic needs like food, medical care and school fees and they stand to continue suffering for as long as he is still incarcerated;

- (h) the Applicant has a constitutional right to apply for and be released on bail at the discretion of this honourable court;
- (i) the Applicant has two persons of high repute, who have offered to stand surety for his release on bail pending the hearing and determination of the charges against him;
- (j) the Applicant undertakes to comply with all the bail conditions that this honourable court may impose upon him and not interfere with the police investigations pertaining to the charges against him;
- (k) the Applicant has no other charges pending against him and there is no likelihood for him to commit any offence when released on bail; and
- (l) the Applicant shall not abscond and he undertakes to deposit in court the original purchase agreement for the *kibanja* on which he constructed his residence as a way of allaying any chances of abscondment.

3. The Respondent opposed the application by an affidavit in reply sworn by Counsel Byakutaaga Sheba, the Senior State Attorney from the Office of the Director of Public Prosecutions dated 24th October, 2023. She deponed that the Applicant is charged with an offence of



aggravated defilement which is grave in nature and was committed to this court in December, 2022.

4. When the Application came up for hearing, the Applicant was represented by Counsel Semakula Patrick from M/s Patrick Semakula & Co. Advocates. The Respondent was represented by Counsel Josephine Nanyonga, a Senior State Attorney from the Office of Directorate of Public Prosecutions. Both parties claimed to have filed their written submissions though the court's record shows only the Applicant's written submissions. Nevertheless, this court shall consider the Respondent's oral submissions.
5. The Applicant's counsel invited this court to consider the annexures to the Applicant's supporting affidavit. He submitted that the temporary release of the accused person is essentially intended to protect and guarantee his or her fundamental rights to liberty, presumption of innocence and the due process of the law.
6. Th Applicant's counsel argued that failure by an applicant to prove all or any of exceptional circumstances in a given bail application does not negate court's discretion to grant bail to an accused person. That court is required to interrogate and establish whether such release is likely to prejudice the pending trial. Counsel cited the case of **Attorney General v. Joseph Tumushabe, Constitutional Appeal No. 3 of 2005**.

7. Counsel submitted that in a bid to minimize the possibility of absconding, the Applicant in the instant application deposed that he is a resident of Namubiru Village, Namubiru Parish, Nama Sub-County, Mukono District and that his residence is situated within the jurisdiction of this honourable court where he owns a permanent residence at the said village. Counsel stated that this was confirmed by the area L.C.1 chairperson in his letter dated 7th August, 2023, attached to the affidavit in support of the application. That the Applicant also provided a copy of the purchase agreement for the plot of *kibanja* upon which he constructed his residence, which he is willing to surrender to court to guarantee that he will honour the bail conditions court may pass against him.

8. The Applicant's counsel presented the following sureties:

(a) Mr. Dungu Jackson aged 49 years, the Applicant's biological brother, resident of Kitega Cell, Namumira / Anthony Ward, Mukono Central Division, Mukono Municipality, Mukono District, with mobile telephone No. 0751 481104 / 0776 481104; and

(b) Mr. Bazilio Wasswa aged 44, the Applicant's friend, resident of Mulago Cell, Ntawo Ward, Mukono Central Division, Mukono Municipality, Mukono District, with mobile telephone No. 0772 122696 / 0700 530658.

9. The Applicant's counsel asserted that having substantial sureties constitute exceptional circumstances. Counsel referred to the case of **Uganda v. Hajji Abas Mugerwa & Anor (1975) HCB 216**. That the sureties were briefed about their legal obligation as sureties and they expressed willingness to honour the same. The Applicant's counsel prayed that it pleases court to find the above two persons substantial for the release of the accused person on bail.
10. Counsel further argued that by committing the Applicant to this court for trial means the prosecution has gathered and is in possession of all the evidence for the successful prosecution of the accused person. That it is therefore unlikely that the accused person when released on bail can again tamper with such evidence. That he also deposed and undertook not to interfere with the witnesses. Counsel prayed that court allows the application and grants the accused person bail.
11. The Respondent's counsel contended that the Applicant will not be easily located since he has not furnished court with his identity card. The Respondent's counsel argued that the first surety is not sure about the particulars of the Applicant yet he claims to be his elder brother and that this shows that he cannot discharge his duties as a surety.
12. Counsel stated that the second surety has not informed court for how long he has been the Applicant's friend so that he can be trusted to prevail over him. That his work place cannot be confirmed whether

he works with MTN or Makerere University Business School, which are two different entities. That he claimed to be a driver of MTN company yet he has the identity card of Makerere University Business School. That such a person cannot be trusted to be able to bring back the Applicant for trial.

13. Counsel prayed that court exercises its discretion putting into consideration the interests of society to be saved from lawlessness and also the victim's rights. That the application be dismissed and the case is fixed for hearing since the accused has been committed for trial.

14. The Applicant's counsel submitted in rejoinder that the committal proceedings were conducted in November, 2022 and to-date, there is no date that has been fixed for the hearing of the charges against the Applicant. That there is no law that prohibits a person who has been committed to the High Court from applying for bail and that being committed does not imply that he is going to be convicted.

15. The Applicant's counsel submitted that it is not true that the Applicant does not have a his national identity card but it is not in his possession because of the way he was arrested. That the accused has produced his L.C.1 introductory letter showing that he is a resident of Namubiru Village where he can be arrested in case of abscondment.

16. That the second surety explained that he is an employee of Makerere University Business School which pays his salary. That the

identity card bears logos of both Makerere University Business School and MTN. Counsel prayed that this court releases the Applicant on bail.

Issue: Whether the Applicant is entitled to be granted bail.

17. The right to apply for bail is derived from Article 23 (6) of the Constitution of the Republic of Uganda, 1995 as amended, which provides that.

“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, if that person has been remanded in custody in respect of the offence for sixty days before trial, that person shall be released on bail on such conditions as the court considers reasonable;

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

18. It is not automatic that once bail is applied for, it is granted. The court hearing the bail application reserves the discretion to either grant bail or deny it. In **Dr. Aggrey Kiyingi v. Uganda, High Court**



Miscellaneous Criminal Application No. 41 of 2005, Justice C.A Okello held at page 4 that:

"As can be seen from the wording of the article, the right that an accused has under it, is the right to apply to court for bail but the discretion to grant or to reject the application is that of the court."

19. There are various consideration that court has to bear in mind while determining whether or not to grant bail. Paragraph 12 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, No. 8 of 2022, provides as follows:

"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 documents issued by the Office of the Prime Minister; and

(d) expounded grounds for the application."

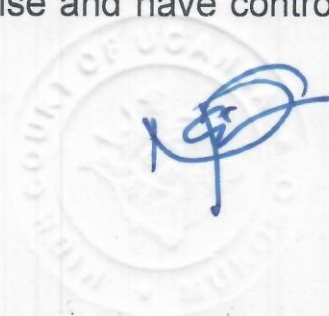
20. The word "shall" is interpreted as mandatory. In the instant case, the Applicant has not attached a copy of any of the documents named in sub-paragraph (a) of the Bail Guidelines cited above. No reason was furnished to court by the Applicant as to why a copy of his national identity card or passport or employment card or student identity card if any, was not attached to the application or original presented before

court. An identification document must be attached to an application for bail. In the absence of an identification document, this application cannot be granted.

21. Similarly, in **Uwacu Busheshi Jeanne Francoise De Chantal & Anor v. Uganda Criminal Misc. Application No. 71 of 2022** 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 was 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 application for bail was dismissed by this court on 3rd March 2023 as there were no identification documents accompanying the bail application.

22. I have also carefully examined particulars of the two sureties presented before this court and find the first surety substantial. The particulars of the second surety indicates that he is 44 years old and the Applicant's friend. This therefore means that the second surety has no close blood relationship with the Applicant and is younger than the Applicant by three years.

23. As stated by the Respondent's counsel, this court was not informed for how long the Applicant and the second surety have been friends and how close they are. In my judgment, it will be hard if not impossible for the second surety to supervise and have control over



the Applicant who is older than him and has no blood relationship with him.

24. Furthermore, the second surety claimed to be a driver of MTN company and yet his employment card shows him as an employee of Makerere University Business School. This creates doubt in court's mind as to the actual place of employment of the surety. Accordingly, I find the second surety not substantial. This leaves only one substantial surety who cannot singly manage the duties of a surety.

25. Basing on the foregoing analysis, I find no merit in this application and it is hereby dismissed. Each party shall meet their own costs of this application. I so rule.

This ruling is delivered this 7th day of Nov. 2023 by


FLORENCE NAKACHWA
JUDGE.

In the presence of:

- (1) Counsel Gawera Topher holding brief for Counsel Semakula Patrick from M/s Patrick Semakula & Co. Advocates, for the Applicant;*
- (2) Mr. Senono Eria, the Applicant;*
- (3) Ms. Pauline Nakavuma, the Court Clerk.*