

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO
CRIMINAL MISC. APPLICATION NO. 98 OF 2022
(ARISING FROM MUKONO CRIMINAL CASE NO. AA 03 OF 2022)

NAMUJUMBI JESCA Alias HANIFA **APPLICANT**
VERSUS
UGANDA **RESPONDENT**

BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA

RULING

1. This is a ruling on an application for bail pending trial brought by notice of motion under the provisions of Article 23 (6) 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) (Applications) Rules, S.I 13-8.

2. The application is amplified by the Applicant's supporting affidavit dated 6th December, 2022 and supplementary affidavits of Mr. Kumuhura Dickson Matsiko and Ms. Nalule Mariam dated 15th May, 2023. The grounds are that:
 - (a) on the 18th day of March, 2022, the Applicant was arrested and on or about the 7th day of April, 2022, she was produced and charged with the offence of murder in the Chief Magistrate's Court of Mukono Holden at Goma Magisterial area;



- (b) since then the Applicant was remanded at Luzira Prison awaiting committal to the High court for trial and remained in custody to-date;
- (c) the Applicant has since then been in custody to-date without trial and she does not know whether there will ever be such session and or when;
- (d) the Applicant has a family composed of young children and since her detention they have lost parental love, care and are on the verge of dropping out of school;
- (e) owing to the lengthy period the Applicant has spent on remand without committal to the High Court for trial, it is reasonable, mandatory and just for her to be granted bail on reasonable terms;
- (f) the lengthy remand period of over six (6) months without trial undermines the Applicant's right to be presumed innocent, and to a fair and speedy trial;
- (g) the Applicant shall not abscond once released on bail pending trial and she has substantial sureties;
- (h) the Applicant is not a danger to the public and no public interest shall suffer in any way if she is released on bail except if further detained;



- (i) the Applicant is a first time offender with no previous criminal record and she has substantial sureties who will ensure that she attends court while on bail;
 - (j) the Applicant has a fixed place of abode within the jurisdiction of this honourable court as a resident of Kiwango-Namwezi Local Council, Bukerere Ward, Goma Division in Mukono District;
 - (k) the Applicant is willing to comply with the bail terms and conditions of this honourable court if her application is granted;
 - (l) the Applicant shall not in any way interfere with witnesses or the prosecutorial process and that court should grant her bail on reasonable terms, in the circumstances;
 - (m) the above grounds amount to reasonable grounds for this honourable court to exercise its discretion in the Applicant's favour and grants her liberty pending trial unconditionally; and
 - (n) it is the Applicant's constitutional right to apply for bail to this honourable court as her trial is likely to be prolonged due to the busy schedule of this court.
3. The Respondent filed its affidavit in reply sworn on 5th May, 2023, by Counsel Byakutaaga Sheba, a Senior State Attorney at the Office of the Director of Public Prosecutions. The application was opposed on the following grounds that:



- (a) the accused person/Applicant is charged with a grave offence of murder c/s 188 and 189 of Penal Code Act, which carries a maximum sentence of death upon conviction thus there is a likelihood of absconding should she be released on bail;
- (b) the Applicant is not committed to the High Court for trial, investigations are not completed, therefore there is a high likelihood that she will interfere with the prosecution witnesses and evidence;
- (c) none of the sureties presented by the Applicant have proved to have a permanent place of abode by either producing land sales agreements or utility bills in their names thus there are high chances that they will fail to fulfil their obligations as sureties especially payment of bail money as no source of income is indicated; and
- (d) no existence of exceptional circumstances has been proved by the Applicant to justify her release on bail as she is charged with a grave offence.

4. When the application came up for hearing, Counsel Okwalinga Moses from the Legal Aid Project of the Uganda Law Society appeared for the Applicant. The Respondent was represented by Counsel Nanyonga Josephine, a Senior State Attorney from the Office of the Director of Public Prosecutions. Both parties filed their written submissions and the Applicant filed submissions in rejoinder.

5. It was argued for the Applicant that the legal essence behind this bail is in respect to upholding her right to personal liberty. That this is



especially the product of the presumption of innocence as protected in the Constitution of the Republic of Uganda, 1995. That the Applicant was remanded to Luzira on the 7th day of April, 2022 and was kept in Luzira for over 180 days without being committed for trial in High Court.

6. The Applicant's counsel presented the following sureties before this court:

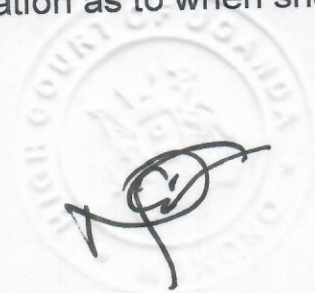
- (a) Mr. Mubuke Hamisi, 40 years old, the Applicant's husband, a businessman dealing in cattle, resident of Kiwango-Namwezi Cell, Bukerere Ward, Goma Division, Mukono District, with mobile telephone No. 0754 171673;
- (b) Ms. Nantongo Prossy, 34 years old, the Applicant's biological younger sister, a trader dealing in food-staff at Kiwango market, resident of Kiwango-Namwezi Cell, Bukerere Ward, Goma Division, Mukono District, with mobile telephone No. 0708 822794;
- (c) Ms. Nalule Mariam, 56 years old, the Applicant's cousin, a trader dealing in food-staff at Kiwango market, resident of Kiwango-Namwezi Cell, Bukerere Ward, Goma Division, Mukono District, with mobile telephone No. 0753 315947;
- (d) Ms. Nabukeera Mayi, 40 years old, the Applicant's sister-in-law, a trader dealing in 2nd hand shoes at Kiwango market, resident of Kiwango-Namwezi Cell, Bukerere Ward, Goma Division, Mukono District, with mobile telephone No. 0753 315947;

A handwritten signature in black ink, consisting of a stylized 'N' and 'M' intertwined, located at the bottom right of the page.

7. Counsel further averred that all the sureties have attached copies of their national identity cards and letters from the L.C.1 chairperson to the application for bail and that counsel has explained to them their duties as sureties and they seem to have understood them. Counsel prayed that this court finds them substantial and be inclined to grant the Applicant bail. Furthermore, the Applicant's counsel submitted that the offence with which the Applicant is charged is bailable by this court. He submitted that the Applicant has clearly told court that she has a fixed place of abode within the jurisdiction of this honourable court as a resident of Kiwango-Namwezi Local Council, Bukerere Ward, Goma Division in Mukono District, therefore, she will never think of absconding bail.
8. The Applicant's counsel argued that an accused person should not be kept in prison unnecessarily before trial and that he or she should not be incarcerated if he or she has a fixed place of abode and has sound sureties, capable of guaranteeing that he or she will comply with the conditions of bail. Learned counsel prayed that this honourable court is inclined to grant the Applicant bail.
9. On the other hand, the Respondent's counsel submitted that the onus of establishing factors for grant of bail to the satisfaction of court squarely lies on the Applicant and that obligation is discharged by presenting credible evidence of high value. Counsel cited the case of **Aganyira Albert v. Uganda, Criminal Miscellaneous Application No. 0071 of 2013.**

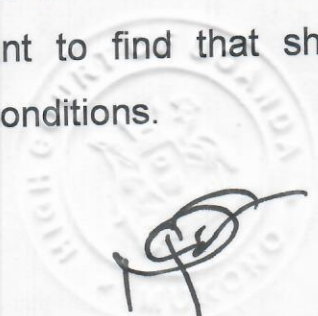


10. That it is trite law that a court of law cannot act on mere speculations or conjecture and that judicial decisions are grounded on the law and evidence. That proving that the Applicant's sureties are substantial calls for documentary evidence of facts to prove the capacity of the sureties to meet monetary obligations in case ordered to forfeit the bond and proof of sureties' particulars that can be easily verified to the satisfaction of the court.
11. Additionally, the Respondent's counsel submitted that the test is whether in case of breach of the bail agreement, the State has verified information that enables police to trace and arrest the surety and bring him or her before the court. That in this case, the Applicant did not accord the Respondent's agents the opportunity to verify the particulars of her sureties.
12. The Respondent's counsel argued that the Applicant has not demonstrated any exceptional circumstances to warrant her release on bail. The Respondent argued that this is not a proper case in which bail should be granted in the absence of proof of exceptional circumstances.
13. It was submitted for the Applicant in rejoinder that the Applicant has demonstrated sufficient cause for grant of bail as demonstrated in her application as well as the Applicant's submissions. That the Applicant has ever since her arrest and committal to the High Court spent over 15 months in custody with no indication as to when she will



be cause listed for trial and that there is a possibility of substantial delay in the case being fixed for hearing.

14. The Applicant's counsel submitted that the Applicant is a responsible family woman, a wife and mother with a 2 years and 8 months old baby who is with her in prison, who should be given special consideration in order to enable her attend to her infant and family which is getting wasted away. Counsel submitted that courts have been cautioned not to treat refusal of bail as a punishment against a bail Applicant or to deprive one of liberty unreasonably. That the preference has been to allow the accused the full benefit of his civil liberties, the gravity of the charges against him or her notwithstanding.
15. Learned counsel contended that the sureties were cautioned that they may be required to pay the value of their bonds in case the Applicant absconds and that none of them appeared shaken. That all the sureties are working in Kiwango market. That exceptional circumstances are no longer mandatory. That court needs to look at the circumstances of each case. Counsel submitted that the offence was committed within the market where the deceased had been accused of stealing property in the market and the deceased died as a result of injuries sustained during mob justice.
16. Counsel conclusively prayed that this honourable court exercises its discretion judiciously while relying on the application, affidavits in support, written submissions, authorities referred to and the specific conditions and antecedents of the Applicant to find that she is deserving of a grant of bail upon reasonable conditions.



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

17. Article 23 of the Constitution of the Republic of Uganda, 1995 as amended provides for the protection of personal liberty. Article 23 (6) of the Constitution in particular provides for release of an accused person on bail. Article 23(6) states as follows:

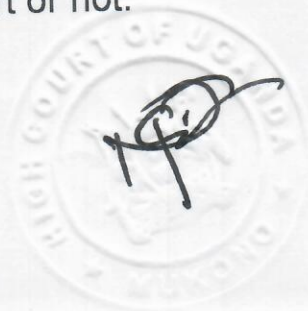
“Where a person is arrested in respect of a criminal offence-

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. However, this constitutional right is not absolute. The court has the discretion to grant bail or refuse to grant bail and what it considers reasonable is a question of fact which is to be considered on case by case basis. The right to apply for release on bail is available to every accused person, whether committed to this court or not.

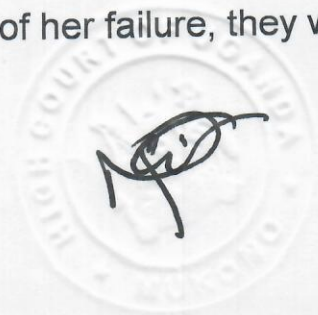


19. In **Attorney General v. Tumushabe [2008] E.A 26**, it was held that:

“It is clear to me that Clause 6 of Article 23 applies to every person awaiting a trial for a criminal offence without exception. Under paragraph (a) of that clause, every such person at any time, upon or after being charged, may apply for release on bail, and the Court may at its discretion, grant the application irrespective of the class of criminal offence for which the person is charged.”

20. While the Applicant and her sureties have not deposited any land sales agreements or utility bills in their names to show that they own property or home as claimed by the Respondent, that alone would not be basis for denying her bail. The important consideration is that the Applicant remains within the jurisdiction of this court and that the sureties prevail over her to ensure that she appears in court or complies with the bail conditions set by court.

21. The Applicant and all her sureties have shown to this court that they are permanent residents within this court’s jurisdiction. Other than the 2nd surety who is younger than the Applicant and who may have minimal or less influence over the her, I find the three other sureties presented substantial. Being the residents within the same village where the Applicant resides and considering their ages, the first, third and fourth sureties are in my judgment capable of prevailing over the Applicant to abide by the bail terms and in case of her failure, they will



be liable to court. Further, in the event of breaching any bail conditions set out by this court, the Respondent will be at liberty to apply to this court for cancellation of the Applicant's bail.

22. The role of sureties is stated in **Halsbury's Laws of England 4th Edition Vol II page 112 -113 para 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 custody of his 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. A contract by the Defendant or someone else to indemnify a surety against liability under his recognizance is illegal."

23. According to the court records, the Applicant was committed to the High Court for trial on the 20th December, 2022. Therefore, this rules out the Respondent's claim that she will interfere with investigation of the main case. Given the case backlog, the criminal case may not be heard in the near future. Considering the circumstances under which the murder is alleged to have been committed and based on the fact that the Respondent has not given any strong reason for denial of the bail, this court is inclined to allow




this application. Therefore, the applicant is hereby granted bail on the following terms:

- (a) the Applicant shall pay cash bond of UGX. 5,000,000/=;
- (b) each surety is bonded in the sum of UGX. 10,000,000/= NOT CASH;
- (c) the Applicant shall report to the Deputy Registrar of the High Court at Mukono once every month with effect from 6th December, 2023 till the final disposal of the main criminal case;
- (d) each party shall bear their own costs of this application.

I so rule and order accordingly.

This ruling is delivered this *6th* day of .. *Nov.* 2023 by



FLORENCE NAKACHWA
JUDGE.

In the presence of:

- (1) Counsel Okwalinga Moses from the Legal Aid Project of the Uganda Law Society, for the Applicant;*
- (2) Counsel Basajjabalaba Siratwa, State Attorney from the Office of Director of Public Prosecutions, for the Respondent;*
- (3) Mrs. Namujumbi Jesca Alias Hanifa, the Applicant;*
- (4) Ms. Pauline Nakavuma, the Court Clerk.*