

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO
CRIMINAL MISCELLANEOUS APPLICATION NO. 45 OF 2023
(ARISING FROM MUKONO CHIEF MAGISTRATE'S COURT CRIMINAL
CASE NO. AA. 27 OF 2023)

BUKENYA WYCLIF :..... APPLICANT
VERSUS
UGANDA :..... RESPONDENT

BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA

RULING

1. This application is for bail pending trial brought by notice of motion under Articles 23 (6) (a) and 28 (3) of the Constitution of the Republic of Uganda, 1995, sections 14 and 15 (1) (b) and (c) of the Trial on Indictments Act, Cap. 23 and the Criminal Procedure (Application) Rules, S.I 11-1. The Applicant aged 27 years old, was charged with the offence of aggravated robbery c/s 285 & 286 (2) of the Penal Code Act, Cap 120.
2. The brief grounds of the application are contained in the notice of motion and amplified by the Applicant's supporting affidavit dated 31st May, 2023, and the supplementary affidavits of Ms. Nazziwa Annet, Mr. Sseguya Julius, Ms. Nabawanuka Sarah and Mr. Wamala Ronald. The grounds for the application are as follows that:



- (a) the Applicant has not been committed for trial and he is on remand at Luzira Government Prison;
- (b) the Applicant has a wife and a child a one Nabukera Jemima aged 2 (two) years and he is the sole bread winner of his family and that his continued remand in custody has brought eminent suffering to his family;
- (c) the Applicant also has high blood pressure and continuous headache;
- (d) the Applicant has a fixed place of abode at Kigombya North Cell, Ggulu Ward, Mukono Central Division in Mukono District, within the jurisdiction of this honourable court and when released on bail, he will ensure regular and timely attendance as and when required by this honourable court and he will not abscond;
- (e) the Applicant has no record of previous conviction;
- (f) the Applicant has substantial sureties namely, Nazziwa Annet, Nabawanuka Sarah, Sseguya Julius and Wamala Ronald who are all residents within the jurisdiction of this honourable court;
- (g) it is in the interest of substantive justice and observation of constitutional rights for the Applicant be granted bail;



(h) the Applicant has a constitutional right to apply for bail and the offence for which he is charged with is bailable and that this honourable court has the discretion to grant him bail;

(i) the Applicant is a responsible citizen with a good character in the community and will not interfere with the prosecution witnesses or do any act to prejudice the prosecution case upon being released on bail; and

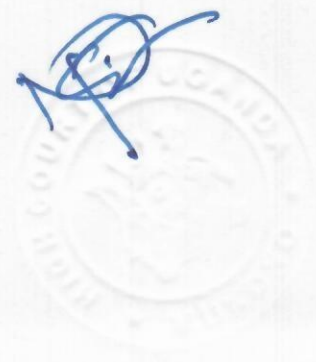
(j) it is fair and just that this application is granted.

3. The Respondent opposed the application through an affidavit in reply dated 11th October, 2023, sworn by Counsel Byakutaaga Sheba, a Senior State Attorney from the Office of the Director of Public Prosecutions. The grounds for opposing the bail application are that:

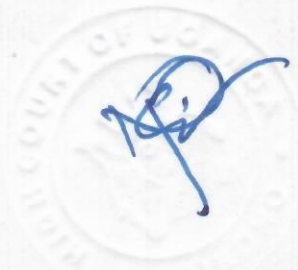
(a) the Applicant was committed to the High Court for trial on 29th September, 2023;

(b) the Applicant is charged with a grave offence of aggravated robbery and there is a likelihood of him absconding and rendering the trial nugatory;

(c) the sureties have not demonstrated to court how they will be in position to pay for the bond in case the accused absconds and that each one of them has not indicated their sources of income.

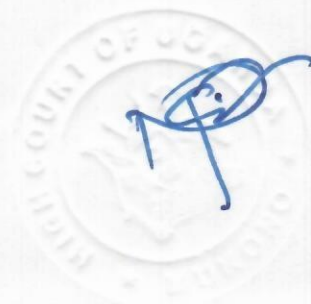


4. When the application came up for hearing, the Applicant was represented by Counsel Sajja Ismail from M/s SMAK Advocates. The Respondent was represented by Counsel Josephine Nanyonga, a Senior State Attorney from the Office of Director of Public Prosecutions. Both parties filed their written submissions which are considered hereunder.
5. The Applicant's counsel reiterated the averments in the Applicant's supporting affidavit and further submitted that it is trite law that a person whose liberty has been deprived by imprisonment before trial or when not serving a sentence has the right to apply for bail which is derived from the presumption of innocence. Counsel argued that the Applicant for bail must not be deprived of his or her freedom unnecessarily or as a punishment where such a person has not been proved guilty by a competent court of law.
6. The Applicant's counsel submitted that the Applicant is charged with the offence of aggravated robbery contrary to sections 285 and 286 (2) of the Penal Code Act and the said offence is bailable by this honourable court. That he has a fixed place of abode at Kigombya North Cell, Ggulu Ward, Mukono Division in Mukono District, within the jurisdiction of this honourable court and that when released on bail, the Applicant will ensure regular and timely attendance as and when required by this honourable court and he will not abscond.
7. Counsel submitted that a letter from the office of the chairperson L.C.I of Kigombya North Cell, Ggulu Ward, Mukono Central Division,



Mukono Municipality in Mukono District, dated 1st day of June, 2023 introduces and confirms that the Applicant is known to him since he is a resident of the area. That the photocopy of the national identity card of the Applicant with his NIN CM96032106EU8C also confirms that the Applicant is a resident of said area.

8. It was further argued for the Applicant that it is not known as to when the trial of the Applicant will commence and therefore his continued stay in prison violates his right to personal liberty and the presumption of innocence until proved guilty by a competent court.
9. The Applicant's counsel presented the following sureties:
 - (a) Nazziwa Annet aged 53 years, the Applicant's biological mother, a business-woman, resident of Kigombya North Cell, Ggulu Ward, Mukono Central Division, Mukono Municipality in Mukono District, with mobile telephone No. 0703 527272;
 - (b) Nabawanuka Sarah aged 50 years, the Applicant's maternal Aunt, a business-woman, resident of Nyenje Cell, Nyenje Ward, Goma Division, Mukono Municipality in Mukono District, with mobile telephone No. 0740 684761;
 - (c) Sseguya Julius aged 30 years, the Applicant's biological brother, a business-man, resident of Kigombya North Cell, Ggulu Ward, Mukono Central Division, Mukono

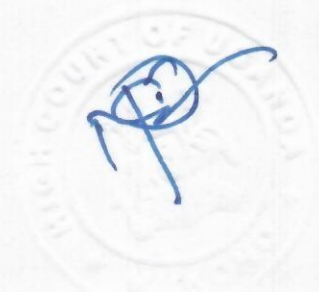


Municipality in Mukono District, with mobile telephone No. 0702 095130;

(d) Wamala Ronald aged 33 years, the Applicant's biological brother, a business-man, resident of Kigombya North Cell, Ggulu Ward, Mukono Central Division, Mukono Municipality in Mukono District, with mobile telephone No. 0708 331146.

10. Learned counsel added that all the sureties filed supplementary affidavits and attached their introduction letters and photocopies of their national identity cards. Counsel stated that the sureties understand their duties and that all the sureties are older than the accused person and persons with authority over him who will cause his attendance whenever he is required to appear in court. Counsel prayed that this honourable court finds the sureties substantial. The Applicant's counsel contended that this application discloses sufficient reasons for the court to exercise its discretion to grant the Applicant bail on fair terms.

11. The Respondent's counsel averred that the paramount question that any court should consider when determining whether to grant bail or not is; if the accused is released from safe custody, can he be trusted to appear in court whenever required? Once this question is answered in the affirmative, then bail should be granted. Counsel argued that if the court has any slightest doubt that causes fear that



the accused may abscond from the jurisdiction of the court, then this is justifiable ground to deny bail to an Applicant.

12. The Respondent's counsel contended that even though the requirement of demonstrating exceptional circumstances is not mandatory, where the Applicant raises it, he or she must prove it. Counsel stated that in this case the Applicant has not demonstrated that there are any exceptional circumstances to warrant the grant of the application.
13. Counsel stated that the evidence of a letter from the Local Council confirming the fact that the Applicant has a fixed place within this court's jurisdiction would be of higher evidential value if it had been endorsed by at least another member of the L.C. like the vice chairperson, secretary, defence or finance. That this would remove the danger of court speculating that the chairperson as an individual knows every human being who resides in his area on a day to day basis.
14. Counsel argued that the Applicant ought to have produced documentary evidence to prove the capacity of his sureties to meet the monetary obligations in case ordered to forfeit the bond and proof of the sureties' particulars that can be easily verified to the satisfaction of the court. The Respondent's counsel submitted that the Applicant did not accord the Respondent's agents the opportunity to verify the particulars of his sureties. That the Applicant has therefore failed to



satisfy this honourable court that he will not abscond once released on bail.

15. The Respondent's counsel invited this court to consider the gravity of the offence of aggravated robbery and the fact that the offence he is charged with involved violence. That the safety of the complainant and her family will be jeopardized. The Respondent's counsel concluded that this honourable court is enjoined with the duty in applications of this nature to balance the constitutional rights of the Applicant against the need of the society to be protected from lawlessness. It is prayed for the Respondent that this application is dismissed since the Applicant has failed to prove to this honourable court that he is capable of appearing whenever he is required to stand trial.

16. In rejoinder, the Applicant's counsel orally submitted that the Applicant was committed to this court on 29th September, 2023 but this application was filed on 6th June, 2023, before he was committed for trial. That it is not known when the trial will take place and therefore keeping the Applicant in prison violates his right to liberty when he is not serving any sentence. The Applicant's counsel argued that the Respondent has not availed to this court any previous record where the Applicant committed an offence, granted bail and became a problem to the society or any previous conviction. Counsel reiterated his earlier prayer that the Applicant is released on bail.

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



17. The jurisdiction of this Court to grant bail pending trial is derived from section 14 of the Judicature Act, Cap. 13 and section 14 (1) of the Trial on Indictments Act, Cap. 23. Section 14 (1) of the Judicature Act, Cap. 13, provides as follows:

“The High Court shall, subject to the Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the Constitution or this Act or any other law.”

18. Section 14 (1) of the Trial on Indictments Act, Cap. 23, provides that:

“The High Court may at any stage in the proceedings 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.”

19. In **Mellan Merere v. Uganda, Supreme Court Criminal Application No. 04 of 2021**, Justice Percy Ntuhaise held at page 9 of her ruling that:

“The grant of bail, whether pending trial or pending appeal, is at the discretion of court, which discretion must be exercised judiciously, with each case being determined on its own merits.”

20. In determining whether to grant or deny bail, the court considers a number of factors. The court considers both the society's interest in maintenance of peace, law and order and the right to liberty of the accused person. Paragraph 13 of Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 provides thus:

"The court shall consider the following in handling a bail application—

- (a) the gravity of the offence;*
- (b) the nature of the offence;*
- (c) the antecedents of the applicant so far as they are known;*
- (d) the possibility of a substantial delay of the trial;*
- (e) the applicant's age, physical and mental condition;*
- (f) the likelihood of the applicant to attend court;*
- (g) the stage of the proceedings;*
- (h) the likelihood of the applicant to commit an offence while on bail;*
- (i) the likelihood of the applicant interfering with witnesses;*
- (j) the safety of the applicant, the community and complainants;*
- (k) whether the applicant has a fixed place of abode within Uganda or whether he or she is ordinarily resident outside Uganda;*
- (l) whether the applicant has sufficient sureties within Uganda to undertake that the applicant shall comply with the conditions of his or her bail;*
- (m) whether the applicant has, on a previous occasion when released on bail, failed to comply with his or her bail terms;*



(n) whether there are any other charges pending against the applicant; or
(o) whether the offence for which the applicant is charged involved violence.”

21. To prove his fixed place of abode, the Applicant has attached to his supporting affidavit a copy of his national identity card and introductory letter from his area Local Council chairperson. In the absence of any evidence to the contrary by the Respondent, I find that the Applicant has discharged the onus placed on him to prove that he has a permanent place of residence within the jurisdiction of this honourable court. This court is convinced that the Applicant's whereabouts can easily be traced once released on bail.
22. The Applicant's counsel presented 4 sureties who have been well identified with known places of abode within the jurisdiction of this court and they are closely related to the Applicant, being his mother, maternal aunt and brothers. The Respondent's counsel contended that the sureties have not demonstrated to court their ability to pay the bond which may be imposed by court in the event of the accused's abscondment.
23. The anticipation of inability by a person to pay bond does not perse disqualify such a person from being a surety. The most important factors to consider in a surety is whether he or she is a responsible person with authority and ability to prevail over the Applicant and



compel him or her to appear in court whenever required to do so. Therefore, in the absence of any compelling reason disqualifying the above presented sureties, I find them all substantial.

24. However, the court has to look at other factors in deciding whether to grant or deny bail. The court has to carefully evaluate the facts of a case. Each case has to be considered on its own merits depending on its circumstances.

25. The Applicant averred in paragraph 4 of his supporting affidavit that he has high blood pressure and continuous headache. However, he has not adduced any evidence to prove to this court that such a medical condition cannot be managed while he is on remand in prison. The Applicant ought to have presented a medical report from Murchison Hospital which indicates that the said hospital is unable to manage his condition while he is under detention.

26. I have perused the particulars of the offence with which the Applicant is charged and noticed that violence was involved in the commission of the crime of aggravated robbery. The particulars of the offence are stated as follows:

“BUKENYA WYCLIF AND OTHERS STILL AT LARGE ON THE 4TH DAY OF MAY, 2023, AT NTAWO VILLAGE, NTAWO WARD, MUKONO DIVISION IN MUKONO DISTRICT, ROBBED ISINGOMA SHAMILA TINDIKAHWA OF A MOTOR



VEHICLE REG. NUMBER UBF 154S CALDINA NEW MODEL VALUED AT 27,000,000/- (TWENTY SEVEN MILLILN SHILLINGS ONLY), 03 MOBILE PHONES i.e SAMSUNG A52 WITH NUMBER 0705 310110 VALUED AT 1,500,000/- (ONE MILLION FIVE HUNDRED THOUSAND SHILLINGS ONLY), HUAWEI 2019 WITH MTN NUMBER 0789 202792 VALUED AT 1,500,000/- (ONE MILLION FIVE HUNDRED THOUSAND SHILLINGS) AND LICA MOBILE PHONE VALUED AT 1,500,000/- (ONE MILLION FIVE HUNDRED THOUSAND SHILLINGS ONLY), HARD CASH 100,000/- (ONE HUNDRED THOUSAND SHILLINGS ONLY), CLOTHES i.e. SUITS, DRESSES, CANVAS SHOES, ALL VALUED AT APPROXIMATELY 40,000,000/- (FORTY MILLION SHILLINGS ONLY) AND AT OR IMMEDIATELY BEFORE OR IMMEDIATELY AFTER THE SAID ROBBERY, USED DEADLY WEAPONS TO WIT A GUN, A PANGA, A STICK AND A DRY BANANA SHEATH, BY THREATENING TO KILL THE SAID ISINGOMA SHAMILA TINDIKAHWA.”

27. The above quoted particulars of the offence with which the Applicant is charge clearly indicates that the offence is grave in nature and it also involved personal violence on the victim of the aggravated robbery. Considering the circumstances under which the offence was purportedly committed as per the above extract, it would be inappropriate, at this early stage of the case, to grant this application as the safety of the victim and the prosecution witnesses is not guaranteed once the Applicant is released on bail. This court's record



shows that the offence was committed on 4th May, 2023 and the accused was remanded on 15th May, 2023. This means that he has spent less than 6 months on remand. No exceptional circumstances have been proved to warrant release of the Applicant on bail at this infant stage of the criminal case.

28. Pursuant to the foregoing analysis, the application lacks merit and is hereby dismissed. Each party will bear their own costs of the application. I so rule.

This ruling is delivered this 8th day of Nov. 2023 by



FLORENCE NAKACHWA
JUDGE.

In the presence of:

- (1) Counsel Sajja Ismail from M/s SMAK Advocates, for the Applicant;*
- (2) Mr. Bukenya Wycliff, the Applicant;*
- (3) Ms. Pauline Nakavuma, the Court Clerk.*