

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT GULU
CRIMINAL MISC. APPLICATION NO. 0074 OF 2023
(Arising from Criminal Session Case No. 0100 of 2023)

ORYEM PATRICK=====APPLICANT

-VERSUS-

UGANDA=====RESPONDENT

BEFORE HON. JUSTICE PHILLIP ODOKI

RULING

Introduction:

[1] The Applicant filed this application seeking to be released on bail pending his trial before this Court, having been indicted on 8 counts of the offence of Aggravated Robbery Contrary to Section 285 and 286(2) of the Penal Code Act and 7 counts of the offence of Malicious Damage to Property Contrary to Section 335(1) of the Penal Code Act and remanded to Gulu Central Prison. The application was brought under Articles 23 (3) (a) & (6) of the Constitution of the Republic of Uganda, 1995 and Sections 14 of the Trial on Indictment Act Cap, 23.

Applicant's case:

[2] The grounds of the application were stated in the Notice of Motion and in the affidavits of the Applicant in support of the application. In summary, the Applicant's case is that, ever since he was committed for trial in the High Court his case has never been cause listed; he has a fixed place of abode; he has substantial sureties; and he has no negative antecedents.

The Respondent's case:

[3] D/Cpl. Amon Vitor swore an affidavit in reply in which he deponed that this court has already considered the Applicant's bail application in High Court Criminal Misc. Application No. 04 of 2023 and dismissed it. He deponed that the factors which were considered by this Court in dismissing the Applicant's bail application are substantially similar to those in the present application. He further deponed that the offences which the Applicant has been indicted of are serious; and the sureties of the Applicants are not substantial.

Legal representation:

[4] The Applicant was represented by Mr. Felis Luzinda of M/s Stabit Advocates. The Respondent was represented by M/s Jean Nareeba a State Attorney from the Office of the Director of Public Prosecutions.

Submission of counsel:

[5] Counsel for the Applicant submitted that the High court can rehear an application for bail which was dismissed. He did not cite any authority for that proposition of the law. Counsel for the Respondent, on the other hand, submitted that this application has already been considered on merit in High Court Criminal Misc. Application No. 04 of 2023. According to counsel for the Respondent, there is nothing that this court is being called to address. She prayed that this application should be dismissed.

Consideration and determination of the court:

[6] It is common ground that the Applicant applied for bail before this court vide High Court Criminal Misc. Application No. 04 of 2023. The grounds of the application were that, his trial was likely to delay; he has a fixed place of abode; he has no negative antecedents; he is of advanced age and suffers from persistent chest pain due to a gun shot on his chest which he sustained during the LRA insurgency; he has substantial sureties; he will not interfere with investigations; and he is willing to abide by any bail terms.

[7] On the 25th April 2023, I delivered a ruling dismissing the application. The reasons for the dismissal were, inter alia, that the Applicant failed to prove that he was of advanced age. He did not also adduce any certificate by a medical officer of the prison or other institution to show that his alleged medical condition was incapable of adequate medical treatment while he is custody. I further held that the offence of Aggravated Robbery is severe. It attracts the maximum of penalty of death if the applicant is found guilty. The Applicant having been committed for trial, the risk of him absconding is not far-fetched. I also noted that the offence was stated to have been committed with violence and with several victims who were still nursing cut wounds on their bodies. Considering the gravity of the accusation made against the applicant and in light of the circumstances surrounding the commission of the offence, I found that it was not a proper case to disregard the requirement of exceptional circumstances, which the applicant failed to prove.

[8] Both counsel, in this application, made arguments on whether this application can be entertained given that the Applicants had unsuccessfully made an application for bail before this court. The position of the law is that while an applicant for bail may reapply for bail before the same court, the subsequent bail applications, can only be made in a limited situation where there is a material change in the circumstances that led to the rejection of the first bail application. Although I was not able to come across any binding decision from the Ugandan courts on the matter, I am fortified by the decision of the Supreme Court of India in the case of **Kalyan Chandra Sarkar versus Rajesh Rajan A.I.R. 2004 S.C.** I find that decision to be persuasive on the matter. In that case, the Supreme Court of India held that:

"Before concluding, we must note though an accused has a right to make successive applications for grant of bail, the Court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the Court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications." In the case of Jogia @ Jogendra Jena, I have held as follows: "Successive bail applications are maintainable but there has to be material change in the fact situation and not mere cosmetic change. Successive bail applications on the same grounds which were available to the accused at the time of consideration of the earlier bail application would not be maintainable. Neither a ground that the earlier bail application was not properly placed by the previously engaged counsel can be entertained." Thus it is the settled position of law that successive bail applications are permissible under the changed circumstances. The change of circumstances must be substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Without the change in the circumstances, the subsequent bail application would be deemed to be seeking review of the earlier rejection order which is not permissible under criminal law. While entertaining such subsequent bail applications, the Court has a duty to consider the reasons and grounds on which the earlier bail application was rejected and what are the fresh grounds which persuade it warranting the evaluation and consideration of the bail application afresh and to take a view different from the one taken in the earlier application. There must be change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete.

This is the limited area in which the application for bail of an accused that has been rejected earlier can be reconsidered. If a bail application is rejected considering some grounds urged by the counsel for the accused and on the self same materials and without any change in the circumstances, the successive bail application is moved taking some other grounds and the Court is asked to reconsider the prayer of bail, it would be an endless exercise for the Court and entertaining such application would be a sheer wastage of valuable time of the Court".

[9] In the instant application, the Applicant has not demonstrated that there is any material change in the fact situation. The grounds in the instant application are substantially the same with those in High Court Criminal Misc. Application No. 04 of 2023. The gravity of the offences with which the Applicant has been indicted, which led this court to deny him bail, after he failed to prove exceptional circumstances, still remain the same.

[10] In the end, I find that this application has no merit. It is accordingly dismissed.

I so order.

Dated and delivered this 21st March 2024.



Phillip Odoki

Judge.