

5 **THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT GULU**

**CRIMINAL MISCELLANEOUS APPLICATION NO. 046 OF 2022**

10 **(ARISING FROM DPP CASE NO. GULU-CO-1548-2022, POLICE CASE  
NO. OMORO CRB 403/2021)**

15 **A1: ODONGTOO RICHARD**

**A2: OKELLO SAMUEL**

**A3: OPIYO NELSON**

**A4: KIDEGA PETER**

**A5: OUMA WILLIAM alias MAGEZI**

20 **A6: OTTO ALBERT**

**A7: OJOK SAMUEL.....APPLICANTS**

**VERSUS**

25 **UGANDA.....RESPONDENT**

**BEFORE: HON. MR. JUSTICE GEORGE OKELLO**

30 **RULING**

This is an omnibus application for bail. The Applicants are indicted with one count of murder contrary to section 188 and 189 of the Penal Code Act Cap 120 (hereafter, PCA), four counts of attempted murder contrary to section 204 of the PCA, and three counts of assault occasioning actual bodily harm contrary to section 204 of the PCA. The offences are alleged to have been committed on 12<sup>th</sup> September, 2021, at Alwii Otega Village, in Omoro District. The Applicants have since been committed to the High Court and await their trial.

40

*H. O. O.*



5 The Application is premised on several grounds namely, the Applicants  
have fixed place of abode at Alwii Village in Onyona Parish, Ongako Sub-  
county, and at Pida-Loro Village, Kal Parish, Ongako Sub-County, all  
within Omoro District. The Applicants have substantial sureties;  
exceptional circumstances exist in the case of A1, A4, and A6; the accused  
10 persons and the family of the deceased have a subsisting land dispute  
pending in the High Court on appeal; the investigations are complete and  
the accused persons have been committed for trial; and it is fair,  
reasonable, just and equitable that the Applicants are released on bail to  
enable them prepare for their defences, and also to be able to take care of  
15 their families. The Application is supported by the affidavits of each  
Applicant, each deposing to facts peculiar to himself. The Applicants also  
lodged affidavits in rejoinder, while others swore supplementary affidavits.

The Application is opposed. The grounds of opposition are contained in the  
20 affidavit of D/CPL Abongu Emmanuel, an Investigating Officer attached to  
Omoro Police Station. He deposes that, given the gravity of the charges,  
the Applicants are likely to abscond if released on bail; the Applicants are  
likely to interfere with witnesses for the Prosecution since they know the  
prosecution witnesses who are resident in the same village; that because  
25 of the murder committed, the relatives of the deceased retaliated against  
the family of the Applicants and have since been charged with aggravated  
robbery, malicious damage to property and assault occasioning actual



5     bodily harm, so, releasing the Applicants on bail would spur more violence  
between the two sides; that the Applicants have not presented exceptional  
circumstances; that the sureties are not substantial; that the Applicants  
and the proposed sureties have not proved that they own property capable  
of being forfeited to the State if the Applicants were to abscond if released  
10    on bail.

As stated, the Applicants rejoined to the deposition of the Respondent  
denying the claims, and furnishing more information. I shall consider the  
relevant aspects of their depositions in my analysis, where necessary.

15

During the hearing, learned counsel Mr. Julius Ojok appeared for the  
Applicants while Ms. Sarah Amony, Chief State Attorney, represented the  
Respondent. On the day the sureties were examined in the court house,  
Mr. Akena Kenneth Fred held brief for Mr. Ojok. Learned counsel orally  
20    summed up the essential aspects of the case, especially on the issues of  
exceptional circumstances and the period the Applicants have so far spent  
on pre-trial remand. The State Counsel opted for oral submission and  
likewise Mr. Akena rejoined orally. I have considered both submission and  
I am grateful to counsel.

25

Given the omnibus nature of the Application, a practice courts deprecate  
as circumstances of each Applicant for bail must be considered distinctly,



5 I will ignore the procedural defect and separately consider the merit of individual circumstances of each applicant. I have noted that, whereas they plead uniform grounds, the Applicants ended up canvassing, in some respects, new grounds in their respective affidavits. The paragraphs of the affidavits which are not grounded on the Motion will be ignored.

10

Before considering each applicant, I seek to set out the general principles for grant of bail. Bail is temporary release of an accused person after providing security for future appearance in court on such conditions as the court considers reasonable. In considering bail application, court is  
15 guided by the Constitutional principles such as, the right of an applicant to be presumed innocent as provided for in article 28 (3) (a) of the Constitution of the Republic of Uganda, 1995; the Applicant's right to liberty as provided for in article 23 of the Constitution; the Applicant's obligation to attend trial; the discretion of court to grant bail on such terms  
20 and conditions as it considers reasonable; and the need to balance the rights of an Applicant and the interests of justice. See: Guideline 5 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022.

25 Other than the above principles, there are several other principles set out by courts over the years. In this application, I will advert to the principles and considerations for bail, as I shall find relevant. The considerations for



5 bail are set out in Guidelines 13 and 14 of the Bail Guidelines. These and  
others, have been summarized by this court in the case of **Ojok Ceasar &  
8 Others Vs. Uganda, Criminal Misc. Application No. 4 of 2023**; and  
**Opiyo Charles alias Small Vs. Uganda, Criminal Misc. Application  
No. 26 of 2022.**

10 Beginning with A1, Odongtoo Richard, I find that his case rests chiefly on  
the grounds of old age and that he will not abscond when released on bail.  
He relies on the fact of having a fixed place of abode at Alwii Village, and  
that his sureties are substantial. A1 argues that he is 52 years old and in  
15 his view, that is an exceptional circumstance. In his affidavit, he mentions  
two sureties namely Lawino Lucy, a spouse, and Opiyo Brian Ojok, a  
Nephew. The Applicant presented a National ID although he had no letter  
from Local Council I Chairperson (LCI) from the area where he lived before  
he was arrested. The sureties presented National IDs and LC letters which  
20 were attached to A1's affidavit. On the day of hearing the Application,  
Opiyo Brian Ojok (the proposed surety) was absent from court. Thus only  
one surety-Lawino Lucy was presented.

The State Counsel argued that since A1 is 52 years old, the age does not  
25 qualify under 'exceptional circumstance' for bail in capital offences. I  
agree. Under Guideline 4 of the Bail Guidelines, "advanced age" means  
sixty years and above. Thus reliance on authorities where courts have held



5 that 50 years and above constitutes advanced age, with respect, is  
incorrect as those cases were decided before the Bail Guidelines came into  
being. The Guidelines, among others, helped to harmonize different  
approaches of different courts regarding bail considerations, the issue of  
advanced age being one. I therefore find that A1 is not of advanced age.  
10 The State further argued that, having not attached an LCI Letter, A1 is  
non-compliant. Whereas I generally agree with this submission as it is  
founded on Guideline 12 (b) of the Bail Guidelines, I am of the view that  
not attaching an LCI Letter in this case, is not fatal. This is because A1  
and indeed all the Applicants, admittedly, are from the same LCI Area of  
15 Alwii and Pida Loro Villages. The State witness volunteered this  
information, when stating that, the Applicants and the complainants and  
their relatives, are from the same Villages. Thus, in my opinion, given that  
the purpose of the LCI letter is to identify that the subject of the letter is  
resident within the particular LCI Area, the omission by A1 to attach the  
20 LCI Letter, has not deprived court of relevant information regarding A1's  
ordinary residence. The other objection by the State counsel, as I  
understood her, was that, the second proposed surety having been absent,  
his substantiality cannot be spoken of. Thus the sole surety is not  
sufficient for bail purposes. I agree with the State submission. On his  
25 part, learned counsel for the Applicants prayed that court grants bail to  
A1.

H. H. H.



5 In this case, although A1 is not of advanced age, in line with the authorities  
of *Foundation for Human Rights Initiative Vs. Attorney General*,  
*Constitutional Appeal No. 03 of 2009 (SCU)*; *Opiyo Charles alias Small Vs.*  
*Uganda, Crim. Misc. Application No. 026 of 2022*, I would have not insisted  
on the requirement that at least an exceptional circumstance be proved,  
10 since the age of A1 of 52, is fairly advanced, and the additional  
consideration in his favour is that A1 looks frail. In this case, whereas the  
sole surety presented for A1 is substantial, in terms of Guideline 15 of the  
Bail Guidelines, I hold that a single surety is not sufficient in a capital  
offence. Thus I find that A1 has not complied with Guideline 13 (1) (l) of  
15 the Bail Guidelines which presupposes at least two sureties. This has also  
been the practice of court. This Court, however, notes that, vide a  
Supplementary affidavit of A1, a one Ochora Mathew was proposed as an  
additional surety. The problem with the proposed surety is that he never  
attended court, and no reason was given.

20

In the circumstances, although I would have been inclined to grant A1  
bail, but on account of lack of an additional substantial surety, court is  
not prepared to grant A1 bail.

25 Turning to A2. Okello Samuel, he said he is 33 years old. He also relies  
majorly on the promise not to abscond and that he has substantial  
sureties. He deposed that his fixed place of abode is in Alwii Village. The



5 sureties A2 presented are, Oloya Brian, a brother and Adwonga Santo, an  
uncle, all residents of Industrial Area. The sureties had LCI Letters and  
National IDs. A third surety was proposed, that is, Okwera Denis, a 20  
year old, but he had no National ID and no LCI letter. A2 also did not  
present a copy of the National ID, thus flouting Guideline 12 (a) of the Bail  
10 Guidelines. Whereas Counsel for A2 prayed for bail, the State Counsel  
objected on the grounds of lack of a National ID and LCI Letter. Whereas I  
would have overlooked the omission to attach the LCI letter because A2  
admittedly is from Alwi Village, the omission to attach a National ID is fatal  
because traceability of A2 would be difficult especially where required to  
15 report to court. Moreover, A2 deposed that he had processed a National ID  
but was yet to be issued with one. There is no proof that A2 filled the  
requisite form issued by NIRA (National Identification and Registration  
Authority), to at least lend credence to his deposition. Whereas the sureties  
are substantial, I find no exceptional circumstances pleaded by A2 be it  
20 those coming within the provision of section 15 (1) and 15 (3) of the Trial  
on Indictments Act Cap 23, and Guideline 14 (2) of the Bail guidelines, or  
those falling outside those mentioned, which this court could still  
consider, as held in the case of **Foundation for Human Rights Initiative  
Vs. Attorney General, Constitutional Appeal No. 03 of 2009 (SCU)**  
25 **(supra).**

Hudson.



5 In the circumstances, given the gravity of the allegations against A2 and  
yet there is no exceptional circumstance proved, and given the fact that it  
would be extremely difficult to trace A2 if he were to abscond once out on  
bail, I hold that A2 has not complied with the requirements for bail. It has  
been held that the most important consideration for grant of bail is  
10 whether the accused will turn up for his trial once released and whether  
he will not interfere in any way with evidence/ witnesses. See: **Foundation  
for Human Rights Initiative Vs. Attorney General, Constitutional  
Appeal No. 03 of 2009 (SCU)**. Indeed in the case of **Attorney General  
Vs. Joseph Tumushabe, Const. Appeal No. 03 of 2005**, Justice Joseph  
15 Mulenga, JSC (RIP) held thus:

***“In the case of a person accused of a criminal offence applying for  
release on bail pending trial, the court’s principal consideration is  
whether such release is likely to prejudice the pending trial.”***

20

For the reasons advanced, I decline A2’s prayer to be released on bail.

Regarding A3 Opiyo Nelson, he deposed that he is 34 years old. He  
presented National ID. He also presented Adong Agnes, a sister, as surety.

25 A3 promised to present Ojok Francis, an elder brother, who, however, for  
no reason, was absent from court during the bail hearing. The LC 1 letters  
show these sureties are residents of Industrial Area. Their National IDs are



5 on record. A third surety was presented, that is, Opiyo Denis Lumumba. He, however, stated that his LCI Chairman is Adong Sandra and she is in charge of Industrial Area. However, Opiyo Denis Lumumba presented a letter written by a one Opiyo George Opira of Pida Village. These contradictions put the credibility of Opiyo Denis Lumumba in serious  
10 doubt. A3 has also not presented any exceptional ground for consideration. Given that the second surety did not attend court and the third surety contradicted himself as to his proper area of abode, I find that A3 has not presented substantial sureties. Thus given the seriousness of the offence of murder, an exceptional circumstance ought to have at least  
15 been presented and the sureties should have been substantial. Therefore, in agreement with the State, I decline A3's request for bail.

A4 Kidega Peter, a 66 year old applicant relies on the exceptional ground of old age. He presented two sureties namely, Kilama Thomas aged 50  
20 years, a brother. The surety had LCI letter and a National ID. He also owns property in Industrial Area as per a sale Agreement. He is resident within Industrial area. The Second surety is Adoch Caroline, a spouse of A4. Both sureties attach letters written in December 2022. At the time of being presented as sureties, Adoch Caroline (Carolina as per the National ID)  
25 presented a letter from LCI Chairman of Pida Village, Ongako Sub-County, while Kilama Thomas presented a letter written by Kal Centre Village, Kal Parish, Ongako Sub-County where he is said to also own property. Kilama



5 Thomas was introduced by counsel as being a resident of Industrial Area,  
although he has land in Ongako also. When asked by court, Mr. Kilama  
did not know the LCI area where he is resident. Adoch Caroline also stated  
she is a resident of Industrial Area. She, however, presented National ID  
and LCI Letter written by Chairman of Pida Village. The surety, however,  
10 claims her LCI Chairperson is Adong Sandra. I find that, the minor  
contradictions about the specific areas of abode of the sureties  
notwithstanding, A4 qualifies for bail. It however, seems the sureties live  
in more than one residential area, one being where they hail from, and the  
other being areas situate within Gulu City where they appear to ordinarily  
15 reside. I hold that, the discrepancies aside, the two sureties generally meet  
the requirements of Guideline 15 (1) and (2) of the Bail Guidelines.  
Furthermore, given that A4 and the complainants are from the same  
village, as stated by the State witness, A4's traceability would not be a  
challenge if required by court at any one time. A4 also relies on ill-health  
20 as an additional ground for bail. He deposed that he suffers from thoraco  
vertebral spondylitis, with deformity, and clavicular bone deformity. This  
averment is confirmed by a medical report from the Medical  
Superintendent of Murchison Bay Hospital, Kampala. It has not been  
controverted.

25

In the circumstances, on account of his age of 66 and ill-health, and since  
the sureties are substantial, I am inclined to grant A4 Kidega Peter non-



5 cash bail of shs. 10,000,000 and each surety is bonded to court in the sum of shs. 5,000,000, not cash.

A5 Ouma William alias Magezi, aged 40 years did not present a National ID, saying his got burnt in the house and he has never processed a replacement. He has a fixed place of abode within Alwii Otega Village. He presented Oneggiu Samuel, a 31 year old Nephew. Oneggiu told court he resides in Lwajatek, Koro and his Chairperson LCI is Mr. Obbo. He is a business man in Layibi Centre under Bilal Metal Fabrication. The second surety was Onen Walter. He is an elder brother of A5. He resides both in Industrial Area and Koro. He is a peasant farmer and a Mason. Both sureties have National IDs and LCI letters. A5 also relies on ill-health. It is said he suffers from Biopolar Affective Disorder with occasional episodes of psychotic attacks (mild in nature). The medical report from Medical Superintendent Murchison Bay Hospital, Kampala, indicates that A5 is on treatment and is being monitored. In my view, the lack of National ID by A5 weakens his request for bail. He did not furnish proof that he reported the destruction of his National ID to Police. He did not obtain a document from NIRA confirming he has ever owned a National ID and its Number. That confirmation is always readily available and can be availed at short notice from NIRA offices. Regarding his ill-health, my view is that the mental condition A5 suffers from, is capable of being managed while in prison custody. The condition would, in my view, be better managed from within the Prison Medical facility in conjunction with a Mental Hospital.



5 Releasing A5 in his current mental condition would not be in his best or  
even public interest. A5 is likely to miss the due attention while outside  
the prison facility. He could also become a risk to his community. This  
court has not been presented with a case where A5 is sought to be released  
for the purposes of accessing specialized medical treatment in a Mental  
10 Hospital which the Prison medical facility is incapable of arranging. In my  
opinion, should A5's condition get to a level where he is unable to stand  
his trial, court will deal with it as per the provision of the Trial on  
Indictments Act.

15 In conclusion on A5, the allegations of murder against A5 being serious  
and given that his condition is not that which requires specialized  
attention outside prison remand facilities, I decline A5's prayer to be  
released on bail.

20 A6 Otto Albert, aged 52 years, presented a National ID. He relies on old  
age, arguing it is an exceptional circumstance. He also argues he will not  
abscond if released on bail, and that his sureties are substantial. A6  
presented two sureties, namely, Amono Christine Ayaa, aged 42, a sister;  
and Komagum-Irwot Robert, an elder brother to A6. The latter proposed  
25 surety says he has a house in Pida Loro and another house in Industrial  
Area. He is, however, ordinarily resident in Pida Loro, and his LCI  
Chairman is a one Opiyo Geoffrey. Aside from the age, A6 relies on a



5 medical report from Murchison Bay Hospital showing he suffers from  
acute chronic gastritis, coupled with headache, dizziness, and general  
body weakness, for the past fifteen years.

The State opposed bail for A6, arguing, his condition is capable of being  
10 managed while in prison from within its facility. Counsel for A6 prayed  
that his client be released on bail.

In my opinion, whereas the age of A6 does not qualify as "advanced age"  
as per the Bail Guidelines which fixes advanced age at 60 years and above,  
15 when the condition of A6 is considered, especially that he has been  
suffering from ill-health for the past 15 years, owing that the prison  
treatment thus far, has not resulted in any improvement, I think A6 has  
met the threshold for grant of bail. Given that he has presented substantial  
sureties; I hereby grant A6 non-cash bail shs. 10,000,000. The two  
20 sureties are each bonded in the sum of shs. 5,000,000, not cash.

A7 Ojok Samuel, an 18 year old applicant presented no National ID and  
no LCI letter. The Affidavit of A7 was not signed and bears no date. Learned  
Counsel for A7 did not seek to correct the anomaly in the affidavit, while  
25 in court. A7 nevertheless, presented Ajok Agnes, an aunt/ mother, and  
Atto Grace, a Grandmother, as sureties. A third surety was proposed, that  
is, a one Okumu Solomon. However, Okumu was absent in the court Hall.



5 Given the lack of a National ID and lack of exceptional circumstances, and  
yet the charge of murder is serious, I decline A7's request to be granted  
bail.

In conclusion, the Application succeeds in respect of A4 Kidega Peter, and  
10 A6 Otto Albert, only. The Application fails in respect of the rest of the  
Applicants.

Before I take leave of this matter, I wish to comment on the reliance by all  
the Applicants on family responsibility as a ground for consideration for  
15 grant of bail. All the Applicants deposed that they are married men with  
children, and have family responsibilities. They averred that they need to  
be out of prison to be able to look after their families. I appreciate the  
Applicants' concerns. However, the Supreme Court of Uganda held in the  
case of Henry Bamutura Vs. Uganda, Misc. Application No. 19 of 2019 (per  
20 Hon. Lady Justice Prof. Tibatemwa- Ekirikubinza, JSC) that, hardship, if  
any, facing one's family, are no exceptional and unusual factors for  
consideration in a bail application. See also: Dominia Karanja Vs. Republic  
(1986) KLR 612.

25 Given my holdings and conclusions, I summarize my orders as follows;



- 5 1. A4 Kidega Peter is hereby released on noncash bail of shs. 10,000,000 and the two sureties namely, Kilama Thomas and Adoch Caroline (Carolina) are each bonded to court in the sum of shs. 5,000,000 not cash.
- 10 2. A6 Otto Albert is released on non-cash bail of shs. 10,000,000 and his sureties Amono Christine Ayaa and Komagum- Irwot Robert are each bonded in the sum of shs. 5,000,000, not cash.
- 15 3. A4 Kidega Peter, and A6 Otto Albert shall report the Deputy Registrar of this Court once a month, every last week of the month beginning February, 2024.
- 20 4. Bail request by A1. Odongtoo Richard, A2. Okello Samuel, A3. Opiyo Nelson, A5. Ouma William alias Magezi, and A7. Ojok Samuel are hereby declined.

Delivered, dated and signed this 31<sup>st</sup> January, 2024.

25 *H. Okello 31/01/2024*  
**George Okello**  
**JUDGE HIGH COURT**





5 Ruling read in court.

**Attendance**

Applicants in court.

Mr. Okot Douglas Odyek, learned Counsel, holding brief for Counsel Julius

10 Ojok, for the Applicants.

Mr. Bangira Bashir, State Attorney for the Respondent.

Mr. Ochan Stephen, Court Clerk.

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*Handwritten: 31/01/2024*  
**George Okello**  
**JUDGE HIGH COURT**

