

(ARISING FROM AMURU MAGISTRATE GRADE 1 CRIMINAL CASE
NO. 17/2021, AMURU CRB 171/2023)

VERSUS

BEFORE: HON. MR. JUSTICE GEORGE OKELLO

This is an Application for bail, pending trial for Murder. The Applicant who is aged 38 years stands indicted for the alleged Murder of a one Ayat Evaline, who, it is conceded, was his spouse. The death is alleged to have occurred on 23/3/2021.

The applicant has since been committed to the High Court for trial. The main grounds are that he has a fixed place of abode, and will not abscond, and the sureties are substantial. The affidavit in support amplifies these. The sureties were presented by learned Counsel for the Applicant; three in number, with their LC 1 Letters, and National IDs. Learned Counsel Mr. Ogen-Rwot Simon Peter invited Court to exercise its discretion and grant bail. He expressed fears that the trial

5 of the applicant will likely delay. The State Counsel Ms. Nareeba
Jean opposes the application. The strong basis is fear of
interference with the State witnesses. She contends the offence
having been committed in a domestic violence setting where
violence was allegedly meted on the deceased in the presence of
10 their children, once released, the Applicant will interfere with
the children from testifying against him. The other objections
relate to sureties; and the lack of LC 1 letter for the Applicant.

I have considered arguments for and against bail. In a capital
15 offence, court still retains discretion whether or not to grant
bail. The most important consideration is whether the applicant
will attend his trial, and will not interfere with evidence thus not
prejudicing the pending trial. See: **Opiyo Charles alias Small
Vs. Uganda Criminal Miscellaneous Application No. 26 of
20 2022.** See also: **Attorney General Vs. Joseph Tumushabe.
Constitutional Appeal No. 3/2005 (Mulenga, JSC).** In this
matter, I find all the sureties substantial as they are related to
the Applicant and reside in the same village of Abongo- Dyang
in Amuru District. That is where they are ordinarily residents
25 as per the requirement of Bail Guidelines 2022. Regarding the
3rd proposed surety – Ms. Aber Brenda Opitekene, the fact that
she is a Police Officer makes her even more substantial in
ensuring the Applicant honours bail terms, once released, as
any abscondment would attract adverse consequences for the
30 Police surety.

Hudson.

Having found all the sureties substantial, I next consider the arguments relating to likelihood of interference with State witnesses. The fear is not far-fetched as Mr. Ogen-Rwot would wish Court to believe. Being members of his household, and children at that, there is a real likelihood of the children of the Applicant declining to testify against their father, at the trial. I agree with the caution Court has to take as adverted to by Mubiru, J. in the case of **Onega Geoffrey Vs. Uganda, Misc. Criminal Application No. 0010/2016**, thus "*in consideration of a bail application by a person accused of murder committed within the context of domestic violence, Court ought to proceed with considerable caution. Where the accused is suspected of having committed crime in the context of family violence, the accused will know the victim and the potential witnesses with whom he or she might live in the same home*".

This is the case instant. I am not persuaded by the verbal undertaking by learned Counsel that his client will not interfere with his children who are likely to be State witnesses in the trial of the Applicant. Thus, for the reasons given, I decline the Application. In any case, in a serious case as this, the Applicant ought to have proved an exceptional circumstance, such as old age which is 60 years and above or grave illness that he suffers certified by Prison Medical Facility as incapable of being treated

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5 whilst on pre-trial remand, or that, the Director of Public Prosecutions does not object to his bail request.

In a nutshell, the Application is dismissed. The Applicant shall be further remanded to Prison, pending his trial during the
10 convenient High Court Criminal Session. It is so ordered.

Delivered and dated at Gulu this 18th March 2024.


George Okello

15 **Judge**

Ruling read in the presence of;

Mr. Ogen-Rwot Simon Peter, for the Applicant.

20 Ms. Nareeba Jean, State Attorney ODPP.

The Applicant.

Mr. Ochan Stephen, Court Clerk.


George Okello

25 **Judge**