

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**

**CRIMINAL MISC. APPLICATION NO. 003 OF 2023**

**(ARISING FROM CRIMINAL CASE NO. 709 OF 2023 AT KASESE  
CHIEF MAGISTRATE'S COURT)**

**KOBUSINGYE MARIAM ::: APPLICANT**

**VERSUS**

**UGANDA ::: RESPONDENT**

**BEFORE HON. MR. JUSTICE VINCENT EMMY MUGABO**

**RULING**

**Introduction**

This application was filed under provisions of sections 48 and 50 of the Criminal Procedure Code Act, and Rule 3 of the Judicature (Criminal Procedure Application) Rules S I 13-8 seeking the following order: The bail condition requiring the application to deposit UGX. 2,000,000/= be revised, set aside or reduced to fair terms.

**Background**

The applicant, Kobusingye Mariam, was charged before the Chief Magistrate's Court of Kasese at Kasese with the offence of doing an act intended to cause grievous harm C/S 216(g) of the Penal Code Act. It is alleged that on the 2<sup>nd</sup> of August 2023 at Kamulikwizi Cell in Kasese district, the applicant unlawfully threw a bottle containing petrol at Nyangoma Mary with intent to cause grievous harm to her.

The applicant applied for bail which was granted on the 18<sup>th</sup> of September 2023 with a condition of cash deposit of UGX. 2,000,000/= . This application seeks a review of the bail terms.

### **Grounds for the Application.**

The grounds for this application are set in the affidavit of the applicant but, briefly, are that:

- a. The applicant is pregnant and was diagnosed with liver and kidney diseases.
- b. The bail condition of depositing UGX. 2,000,000/= in cash in court is harsh and excessive.
- c. That she has six children who need her attention at home.
- d. It is just and fair that this application is granted.

The respondent did not file an affidavit in reply opposing this application.

### **Representation and hearing.**

The applicant was unrepresented. The respondent's attorney did not appear in court. The applicant filed written submissions, which I have duly considered in this ruling, although I do not reproduce them here.

### **Consideration by Court**

Although this application is brought under provisions of sections 48 and 50 of the Criminal Procedure Code Act which pertains to revision, it essentially seeks a review of the bail terms i.e. the condition cash deposit of UGX. 2,000,000/= in court.

The correct law under which this application should have been filed is section 75(4) of the Magistrates Courts Act and paragraphs 21(1) and (2) of

the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022.

Section 75(4)(a) of the Magistrates Courts Act provides that the High Court may, in any case where an accused person is appearing before a magistrate's court, where the case is one bailable by a magistrate's court, direct that any person to whom bail has been refused by the magistrate's court be released on bail or that the amount required for any bail bond be reduced. On the other hand, paragraph 21(1) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 provides that the prosecutor, an accused person or a surety may apply to the court to vary, review or set aside the conditions of bail at any time after the ruling has been made.

Be that as it may, I am alive to the position in the case of ***Saggu Vs. Road Master UG. Ltd [2000] EA LR 255*** which is to the effect that ***“where an application omits to cite any law at all or cites the wrong law but the jurisdiction to grant the order exists, the irregularity or omission can be ignored, and the correct law inserted.”***

Having inserted the correct law, I will proceed to determine the merits of this application.

A grant of bail is at the discretion of the court (***See Articles 23 (6) (a) and 28 (3) of the Constitution of the Republic of Uganda, Uganda Vs Kiiza Besigye; Const. Ref No. 20 of 2005***). While exercising its discretion to grant bail, the Court takes into consideration, among others, the gravity of the offence and the likelihood of the applicant attending court. (***See Paragraph 12 of Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022.***)

The overruling factor for the grant of bail is, in my view, the flight risk. i.e., the likelihood of the accused avoiding attending court. Therefore, before the grant of bail, a presiding magistrate or judge must, in the circumstances of the case, take into consideration the likelihood of the accused attending court whenever required, if he or she were to grant bail.

A requirement of cash deposit acts as a financial incentive for the accused to comply with court dates, as failing to appear can result in the forfeiture of the deposit. Sometimes, the court may require a substantial cash deposit to deter the accused from fleeing, and in a case where the accused does not appear in court, the forfeited bail money can compensate the state for the resources spent on apprehending the accused.

Nonetheless, while the requirement of a cash deposit ensures the administrates of justice and safety of the community, it should not be at the expense of the presumption of innocence and the right to liberty of the accused. The requirement is cash deposits should not be so onerous that they effectively result in the denial of bail to the indigent accused.

In the U.S. Supreme Court case of ***Stack Vs. Boyle 342 U.S. 1 (1951)***, several defendants were charged with conspiring to overthrow the U.S. government. The trial court set a uniform bail amount of \$50,000 for each defendant. The defendants challenged this bail amount, arguing that it was excessively high and violated the Eighth Amendment's prohibition against excessive bail. They contended that the court had not considered their individual circumstances when setting bail. The Supreme Court held that bail must be individualized and tailored to the specific circumstances of each defendant, including factors like the nature of the offence, the evidence against them, their financial ability to pay, and their character

and history. The ruling underscored that bail must be based on standards relevant to the risk of flight, among other factors.

In the instant case, the applicant states that the cash deposit condition of UGX 2,000,000/= is harsh and excessive, and she cannot afford it, given that she is pregnant and has been diagnosed with kidney disease, which has taken a financial toll on her.

However, the offence with which the applicant is charged is grave and on conviction, it attracts imprisonment for life. Therefore, in consideration of factors that should be considered before the grant of bail, and in light of the serious nature of the charge against the accused, this court finds that the requirement for a cash deposit of UGX. 2,000,000/= is commensurate with the assessed flight risk.

The set bail amount aims to ensure the accused's presence at trial by providing a significant financial incentive to comply with court proceedings, while also considering the nature of the offence and the potential consequences of non-appearance.

Therefore, this court deems the bail amount reasonable and necessary to balance the rights of the accused with the imperatives of justice and public safety.

Resultantly this application has no merit and is hereby dismissed.

It is so ordered.

Ruling delivered at Fort Portal this 24<sup>th</sup> of May 2024



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**Vincent Emmy Mugabo**  
**Judge**