

The Republic of Uganda

In the High Court of Uganda at Soroti

Criminal Miscellaneous Application No. 0003 of 2024

(Arising from Criminal Case No. AA 598 OF 2022, Soroti CRB No. 243 of 2022)

10 A1. Alonya Isaac } Applicants
A3. Esou Vincent }

Versus

Uganda Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

1. Introduction.

This is an application brought by notice of motion under Articles 20(2), 23(6)(a) & 28 (1) & (3)(a) of the Constitution of the Republic of Uganda 1995, Section 17(2) of the Judicature Act and Section 14 of the Trial on Indictment Act Cap. 23 for orders that;

- a) The applicants now on remand at Soroti Government Prison be released on bail pending the hearing of their case upon such conditions as this Honourable court shall deem fit.

25 2. Grounds.

The grounds of this application as set out in the application and supporting affidavits sworn by the applicants are that;

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- 5 1. The applicants have a fundamental constitutional right to apply for bail and this Honourable Court has the discretion to consider the grant of bail.
2. That the applicants were arrested sometime in October 2022 and charged with the offences of Aggravated Robbery C/s 285 & 286 of the Penal Code Act and attempted murder C/s 204 of the Penal Code Act and were committed for trial to the High Court on the 16th of March 2023 and have since been remanded in Soroti Government Prison.
- 10 3. The applicants are presumed innocent till proven guilty or until they plead guilty to the charge.
4. That the applicants have been on remand in Soroti Government Prison for over Nine (9) months and they have clocked the mandatory remand period of 180 days and are therefore entitled to apply and be released on bail.
- 15 5. The applicants have permanent and fixed places of abode at Ogorai village, Odudui Parish, Arapai Sub-county, Soroti District within the jurisdiction of this Honourable Court.
- 20 6. The applicants have each presented two (2) sureties who understand their obligations towards this Honourable Court and are ready to be presented before this Honourable Court for examination and approval.
7. The applicants will not interfere with any of the witnesses of the prosecution or any evidence to be tendered in support of the charge.
- 25 The respondent in an affidavit in reply sworn by State Attorney Okello Paul objected the application on the following grounds;
1. That the 1st applicant is charged with the offences of aggravated robbery c/s 284 & 285 and attempted murder c/s 204 of the Penal Code Act, which offences attract a maximum penalty of death and life imprisonment

5 respectively upon conviction thus the applicant is most likely to abscond
bail in fear of the severe sentences upon conviction.

2. That the prosecution is taking considerable measures to ensure that the 1st
applicant is cause-listed and scheduled for hearing.

10 3. That although the 1st applicant has a constitutional right to apply for bail,
the right to grant bail remains a preserve of this Honourable Court to which
he prays that bail be denied.

15 4. That due to the seriousness and sensitivity of the offences with which the
1st applicant is charged, once released on bail, he is likely to interfere with
key prosecution witnesses who are well known to the 1st applicant and
these witnesses are currently not under his protection. This will gravely
affect the prosecution case.

20 5. That the 1st applicant has not demonstrated that he has any exceptional
circumstances justifying his release on bail and no evidence of the same
has been attached to his application for the release on bail by this
Honourable Court.

6. That the sureties are not substantial since they have not presented their
occupation in order for this Honourable Court to determine their social
position hence the sureties may not be able to pay the recognizance set by
court.

25 7. That the respondent has noted that all the recommendation letters which
purport that the sureties and the 1st applicant are residents of those given
areas, however, no documentary proof such as land title, rent payments
have been availed to support the claim and thus the applicant and his
sureties have failed to prove that they have permanent and fixed places of
30 abode within the jurisdiction of this Honourable Court.

5 8. The respondent believes that this Honourable Court is taking considerable measures to ensure that the 1st applicant is immediately scheduled for trial as soon as possible. Therefore, there is no need for the applicant to dwell on uncertainties if when trial will be commenced in the High Court.

3. Representation.

10 The applicant was represented by M/s Menya & Co. Advocates while the respondent was represented by the ODPP, Soroti.

This application proceeded by way of written submissions which have been considered in its determination.

4. Determination.

15 The presumption of innocence is the primary principle for which a court may, in the exercise of its discretion, release an accused person on bail pending trial as stated Article 28(3)(a) of the Constitution of the Republic of Uganda, 1995 which provides that;

20 **Every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty or until that person has pleaded guilty.**

Article 23(6)(a) of the Constitution of the Republic of Uganda provides that:

Where a person is arrested in respect of a Criminal Offence, he is entitled to apply to the Court to be released on bail, and the Court may grant that person bail on such conditions as the Court considers reasonable.

25 In their individual affidavits the applicants conceded to this Honourable Court's discretion to release them on bail pending the hearing of their case.

Capital offences such as aggravated robbery and attempted murder in this instant application are bailable; however, whether the court is inclined to exercise the

5 discretion to grant or not is a matter dependent on the circumstances of each case.

Section 14(1) of the Trial on Indictments Act, Cap 23 expounds on the provision outlined in Article 23(6)(a) of the Constitution. It underpins this Court's discretion to release an accused person, at any stage of the proceedings, on taking from
10 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.

The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 under paragraph 5 provide for the general principles applicable in the
15 consideration of a bail application thus;

The court shall, in considering a bail application, be guided by the following principles as enshrined in the Constitution—

(a) the right of an applicant to be presumed innocent as provided for in article 28(3)(a) of the Constitution;

20 (b) the applicant's right to liberty as provided for in article 23 of the Constitution;

(c) the applicant's obligation to attend trial;

(d) the discretion of court to grant bail on such terms and conditions as the court considers reasonable; and

(e) the need to balance the rights of the applicant and the interests of justice.

25 Paragraph 12 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions provides for contents to be considered in a bail application thus;

- 5 An application for bail shall contain the particulars of the applicant, accompanied by—
- (a) a copy of the applicant's national identity card, or passport or aliens identification card, or employment card, or student identity card;
 - (b) an introduction letter from the Local Council 1 chairperson of the area where
10 the applicant resides;
 - (c) where applicable, asylum seeker or refugee registration documents issued by the Office of the Prime Minister; and
 - (d) expounded grounds for the application.

Section 15(1) of the Trial on Indictment Act provides thus;

- 15 Notwithstanding section 14, the court may refuse to grant bail to a person accused of an offence specified in subsection (2) if he or she does not prove to the satisfaction of the court—
- (a) that exceptional circumstances exist justifying his or her release on bail; and
 - (b) that he or she will not abscond when released on bail.
- 20 In this section, "exceptional circumstances" means any of the following—
- (a) grave illness certified by a medical officer of the prison or other institution or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody;
 - (b) a certificate of no objection signed by the Director of Public Prosecutions; or
 - 25 (c) the infancy or advanced age of the accused.

However, these special circumstances have been found non-mandatory by the Constitutional Court.

5 Section 15(4) provides

In considering whether or not the accused is likely to abscond, the court may take into account the following factors—

(a) whether the accused has a fixed abode within the jurisdiction of the court or is ordinarily resident outside Uganda;

10 (b) whether the accused has sound sureties within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail;

(c) whether the accused has on a previous occasion when released on bail failed to comply with the conditions of his or her bail; and

(d) whether there are other charges pending against the accused.

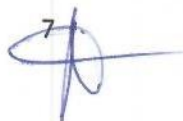
15 In deciding to grant or not to grant bail to the applicant, the court is enjoined to consider the accused's demonstration that they will not abscond trial by considering the above factors, which are examined one by one.

a. Fixed place of abode.

20 A1 Alonya Isaac under paragraph 9 of his affidavit in support stated that he is a true resident of Ogorai Village, Odudui Parish, Arapai Sub-county Soroti District within the jurisdiction of this Honourable Court and he has been introduced by the LC1 of his area.

25 Annexure 'A' to his affidavit is a copy of a letter dated 10th of December 2023 authored by the LC1 Ogorai village in reference to Alonya Isaac. Herein he states that the Alonya is a true permanent resident of his area.

Annexure 'B' to his affidavit is a copy of his national ID CM01038108TAHC indicating that he is 23 years old and a resident of Ogorai village.



5 A3 Esou Vincent under paragraph 9 of his affidavit stated that he is a true resident of Ogorai Village, Odudui Parish, Arapai Sub-county Soroti District within the jurisdiction of this Honourable Court and he has been introduced by the LC1 of his area.

Annexure 'D1' to his affidavit is a copy of a letter dated 10th of December 2023
10 authored by the LC1 Ogorai village in reference to Esou Vincent. Herein he states that the Esou is a true permanent resident of his area.

Annexure 'D2' is a copy of his voter's location slip which though expired indicates that he is 32 years old and a resident of Odudui parish in Arapai sub-county.

The essence of a fixed place of abode is the traceability of an accused in the event
15 of abscondment or whenever necessary.

Section 15(4) (a) of the Trial on Indictment Act provides that in considering whether an accused is likely to abscond court may take into consideration whether the applicant has a fixed place of abode within the jurisdiction of the court.

20 This requirement is amplified by paragraph 13(k) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions.

While I note that the law does not define the phrase '*fixed place of abode*', my own interpretation is that a fixed place of abode is such a place within the jurisdiction of the court which is considering the bail application and where an
25 applicant fails to prove this as provided for by section 15(1) of the TIA the court may deny him bail.

The state attorney in his submissions argued that residence can change at will and one can show proof of fixed place of abode through documents like land title, copy of rental agreement which the applicants have not presented.

5 I do not find it legally necessary for the applicants herein to present land titles or
rental agreements to prove fixed place of abode as the Constitution (Bail
Guidelines for Courts of Judicature) (Practice) Directions under paragraph 12
provide as to the minimal content of a bail application to include, *inter alia*, an
introduction letter from the Local Council 1 chairperson of the area where the
10 applicant resides which, in my opinion, is sufficient to prove fixed place of abode.
Consequently, once an applicant has produced an introduction letter from his
LC1 Chairperson, should a respondent want to dispute that fact then it should
provide proof otherwise.

In this application given the fact that the applicants have presented introduction
15 letters from the LC1 Ogorai village that indicate that they are true permanent
residents of his area and there is no contrary proof to that fact, then I would find
that the applicants herein have proved fixed place of abode. This ground
succeeds.

b. Suretias.

20 A1 Alonya Isaac presented three sureties for examination by this court and these
are;

Ediau Joseph Okuda his biological father, Anapo Stela Rose his biological mother
and Esou Vincent the vice chairperson of Ibasere clan. All the proposed sureties
are all permanent residents of Ogorai Village, Odudui Parish, Arapai Sub-county
25 Soroti District.

The sureties were introduced to this court by the LC1 of Ogorai village vide
annexures 'C1', 'C2' and 'C3' which are letters of introduction dated 10th of
December 2023. These letters all indicate that the proposed sureties are true
permanent residents of Ogorai village with the Ediau and Anapo being parents to

5 Alonya and peasants in his area who are humble and law abiding citizens. I noted that 'C3' is not authored by the LC1 Ogaori village rather Esou Vincent introduces himself as vice chairperson of Ibasere clan to which the applicants belong and that he has a permanent home in the Ogorai village.

10 Copies of the proposed sureties' National IDs were attached. Eidau Joseph Okuda CM68038102980E is indicated as a resident of Ogorai village aged 56 years. Anapo Stella Rose CF690381029CDF is indicated as a resident of Ogorai village aged 55 years. Esou Vincent is indicated as a resident of Katabi-Busambagala village, Katabi parish, Division A in Entebbe Wakiso aged 58 years.

15 A3 Esou Vincent presented three sureties for examination by this court and these are;

Enasu Francis his paternal uncle, Ageyo Sarah his wife and Esou Vincent his clan vice chairperson all resident of Ogorai Village, Odudui Parish, Arapai Sub-county Soroti District.

20 Copies of their introduction letters and national IDs were attached as 'E1', 'E2' and 'E3'. Enasu and Ageyo are introduced by the LC1 of Ogorai village as true permanent residents of his area, in their individual letters he introduces them as the uncle and wife to the applicant both being peasants in his area who are humble and law abiding citizens. As in the case of A1 Alonya, Esou Vincent, the clan vice chairperson letter was not authored by the LC1 Ogoria but rather a self-
25 introduction.

Copies of the proposed sureties' national IDs indicate that Enasu Francis CM73038101KUEG is a resident of Ogorai village aged 51 years, while Ageyo Sarah CF96038101KQNH is a resident of Amorikot village, Olwelai parish, Katine sub-county in Soroti District aged 28 years. Esou Vincent is indicated as a resident



5 of Katabi-Busambagala village, Katabi parish, Division A in Entebbe Wakiso aged 58 years.

I have noted that the introduction letter of Ageyo Sarah and her national ID indicate varying residencies, however, the difference within the two documents does not negate the fact that she comes from Ogorai village as proven by the
10 letter of introduction.

She having presented an introduction letter from the local council 1 chairperson of the area where she is ordinarily resident, the deviation in the details is not fatal to this application.

A "surety" is defined under Paragraph 4 of the Constitution (Bail Guidelines for
15 Courts of Judicature) Practice Directions to mean **a person who undertakes to ensure that the applicant will appear in court and abide by the bail conditions and who furnishes security which may be forfeited to State if the applicant fails to appear in court.**

Furthermore, Section 15 (4)(b) of the Trial on Indictment Act and paragraph 13(1)
20 (I) of the Constitution (Bail Guidelines for Courts of Judicature) Practice Directions provides that in considering whether an accused is likely to abscond the court shall consider whether the accused has sound sureties within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail.

Paragraph 15 of the Constitution (Bail Guidelines for Courts of Judicature)
25 (Practice) Directions provides for determinants on the suitability of a surety thus;

(1) When considering the suitability of a surety, the court shall take into account the following factors—

(a) the age of the surety;

(b) work and residence address of the surety;

- 5 (c) character and antecedents of the surety;
(d) relationship to the accused person; and
(e) any other factor as the court may deem fit.

(2) Subject to sub-paragraph (1) the proposed surety shall provide documentary proof including—

- 10 (a) a copy of his or her national identity card, passport or aliens identification card;
(b) an introduction letter from the Local Council 1 Chairperson of the area where the surety is ordinarily resident; or
(c) asylum seeker or refugee registration documents issued by the Office of the
15 Prime Minister.

I find that for **A1 Alonya** Isaac, his biological parents Ediau Joseph Okuda and Anapo Stella Rose have proven to be substantial sureties.

A3 Esou Vincent, his paternal uncle and wife Enasu Francis and Ageyo Sarah have also proven to be substantial sureties.

- 20 As for Esou Vincent who was the 3rd proposed surety for both applicants, I have noted that he authored his own introduction letter and as such does fail to prove fixed place of abode in consonance with Paragraph 15 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions which requires such an introductory letter originating from the Local Council 1 Chairperson of the area
25 where the surety is ordinarily resident not a self-introduction. He is thus not found substantial for any of the applicant.

5 The applicants in their individual affidavits in support under paragraph 12 stated that the sureties are persons of good social standing and respect who have been duly briefed on their duties as sureties which they confirmed to have understood. Counsel for the applicants in his submissions stated that the sureties will ensure that the applicants attend court whenever called upon.

10 The sureties, Ediau Joseph Okuda and Anapo Stella Rose for **A1 Alonya Isaac** and Enasu Francis and Ageyo Sarah for **A3 Esou Vincent** herein are warned to ensure the attendance of the accused person before court whenever required, have a duty to sign the bail bond form.

They are also warned that they are duty bound to inform court where an accused
15 person is not able to attend and are liable to pay the bail bond sum should they fail to ensure the attendance of the accused person before court.

State attorney in his submissions stated that while the applicants in their affidavits stated under paragraph 7 that they will not interfere with prosecution witnesses, he argued that the witnesses are within the locality of the accused's
20 area and their release will not only intimidate.

While this a serious allegation that could lead to denial of bail once proven, in this instance no evidence of this threat has been adduced and court cannot found a decision against an applicant without evidence supporting it as the refusal to grant bail should not be based on mere allegations, the grounds must be
25 substantiated. (See: *Uganda v Kiiza Besigye (Constitutional Reference No. 20 of 2005) [2006] UGCA 42*).


However, the applicants are warned of this court's power to cancel bail under should they be found to threaten any of the prosecution witnesses or abuse their bail in any way.

5 5. Conclusion.

On the basis of the evidence put forward, the severity of the offences having been considered, court is satisfied that this is a case where it should exercise its discretion and grant bail to the three applicants pending their trial. Bail is accordingly granted on the following conditions;

- 10 1) Cash bond of Shs. 2,000,000/- for each applicant.
- 2) Each of the Sureties is bound in the sum of Shs. 10,000,000/- not cash.
- 3) The applicants and each of their sureties are to provide a recent photograph, telephone numbers and copies national IDs to the Registrar of this court and to the Chief Resident Soroti for filing and record purposes.
- 15 4) The Applicants are to report to the Registrar of the Court once a month on the first Monday of each month with effect from 01/07/2024 until otherwise directed by court.

I so order.

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Hon. Justice Dr Henry Peter Adonyo

Judge

28th June 2024

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