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The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Miscellaneous Application No. 0026 of 2023

(Arising from Criminal Session Case No.23 of 2023)

10 Ocan Isaac Applicant

Versus

Uganda Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

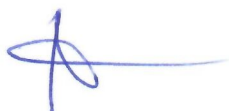
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Ruling on Bail Application

1. Introduction:

This is an application by way of Notice of motion brought under Articles 2(1), 23 (6)(a) & 28 (1) of the Constitution of Uganda, sections 14 and 15 of the Trial on Indictment Act and rules 2 & 4 of the Judicature (Criminal
20 Procedure) (Applications) Rules for orders that the applicant now on remand at Soroti Prison be released on bail pending his trial upon such conditions as the Honourable court shall deem fit.

The grounds of the application as set out in the application and supporting affidavit are that the applicant has a constitutional right to apply to be
25 released on bail at the discretion of this honourable court. The applicant has a fixed place of abode within the jurisdiction of this honourable court and will not abscond if released on bail.



5 The applicant has substantial sureties to stand for him and will abide by the conditions of this court. The applicant has no negative antecedents whatsoever and there are no other charges pending against him.

The respondent in an affidavit in reply sworn by Senior State Attorney Emasu Michael of the office of the DPP, stated that the applicant is charged
10 with the offence of aggravated defilement which attracts a maximum sentence of death and might abscond if released on bail. The prosecution is ready to proceed with its witnesses any time the matter is fixed for hearing. That the sureties are related to the applicant and this may hinder them from taking a strong stand against the applicant in attending court.

15 That no documentary proof such as land title, rent payments have been availed to support the claim of fixed place of abode for the applicant and his sureties. That it is in the interest of justice that the applicant's application for the grant of bail be denied and the case be fixed for hearing.

The applicant was represented by M/s Ewatu & Co. Advocates and the
20 respondent by the Office of the DPP.

This application proceeded by way of written submissions and the same will be considered in its determination.

2. Determination:

a) The Law:

25 In Uganda (DPP) Vs. Col (RTD) Dr. Kiiza Besigye, Constitution reference No. 20 of 2005 it was held that the accused has the right to apply to court to be released on bail and the court has the discretion whether to grant bail under Article 23 (6) (a) of the Constitution of Uganda, 1995 which provides that;

5 Where a person is arrested in respect of a criminal offence—

(a) the person 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;

Capital offences such as aggravated defilement in this instance are bailable,
10 however, whether the court is inclined to exercise the discretion to grant or not is a matter dependent on the circumstances of each case.

Section 14(1) of the Trial on Indictment Act amplifies Article 23(6)(a) of the Constitution thus;

(1) The High Court may at any stage in the proceedings release the
15 accused person on bail, that is to say, on taking from 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.

20 The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 under paragraph 5 provide for the general principles applicable in the 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—

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

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

5 (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.

10 Paragraph 12 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions provides for contents of a bail application thus;

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
15 identification card, or employment card, or student identity card;

(b) an introduction letter from the Local Council 1 chairperson of the area where the applicant resides;

(c) where applicable, asylum seeker or refugee registration documents issued by the Office of the Prime Minister; and

20 (d) expounded grounds for the application.

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

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—

25 (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.

- 5 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
 - 10 Prosecutions; or
 - (c) the infancy or advanced age of the accused.

Section 15(4) provides

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

- 15 (a) whether the accused has a fixed abode within the jurisdiction of the court or is ordinarily resident outside Uganda;
- (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;
- 20 (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.

b) Fixed place of abode:

The applicant under paragraph 11 of his affidavit stated that he has a fixed

25 place of abode at Olep Cell, Okeretok Ward, Ocheri Town Council, Kaberamaido District within the jurisdiction of this court.

5 An introduction letter dated 07.04.2023 in respect of the applicant was
attached to the application and therein the LC1 Olep Cell, Okeretok Ward,
Ochero Town Council, Kaberamaido District stated that the applicant has
been a resident of Olep Cell until the time of his arrest. However, no copy
of any form of identification was adduced in court as required by Guideline
10 12(a) above cited and no reason was given for its absence.

The essence of a fixed place of abode is traceability of an accused in the
event 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
15 fixed place of abode within the jurisdiction of the court. This is amplified
by paragraph 13(k) of the Constitution (Bail Guidelines for Courts of
Judicature) (Practice) Directions. While the Law does not define the phrase
'fixed place of abode' what is important is that the fixed place of abode
must be within the jurisdiction of the court considering the bail application.
20 Where the applicant fails to prove this under section 15(1) of the TIA the
court may deny him bail.

While the introduction letter from the LC1 points to a place of abode in
Olep Cell, the Bail Guidelines require that the applicant present a form of
identification be it a national identity card, or passport or aliens
25 identification card, or employment card, or student identity card, which
has not been adduced in this instance and without reason, that
notwithstanding proper proof of residence is the introduction letter from
the applicant's Lc1 chairperson and as such I find he has proved fixed place
of abode.

5 c) Substantial sureties:

The applicant under paragraph 12 of his affidavit states that he has two sureties that is Anume Regina aged 59 years' mother to the applicant and Elemu Emmanuel 27 years old elder brother to the applicant, both are peasant farmers and residents of Olep Cell, Okeretok Ward, Ochero Town Council, Kaberamaido District. The LC1 Olep Cell in his introductory letters for each surety marked 'B' and 'D' respectively stated the sureties are true residents of his area and law abiding citizens. Annexures 'C' and 'E' are copies of their national IDs indicating their area of residence as Olep, Anyalam, Ochero, Kaberamaido.

15 Counsel submitted that he explained to the sureties their roles and duties which they understood to wit ensuring reporting to court till the disposal of the case and or appearing in court in absence of the applicant. He added that the sureties presented to court are closely linked to the applicant and have control over him and will ensure compliance of bail terms and

20 conditions by the applicant.

Paragraph 15 of the Constitution (Bail Guidelines for Courts of Judicature) (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

25 account the following factors—

- (a) the age of the surety;
- (b) work and residence address of the surety;
- (c) character and antecedents of the surety;
- (d) relationship to the accused person; and

5 (e) any other factor as the court may deem fit.

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

(a) a copy of his or her national identity card, passport or aliens identification card;

10 (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 Prime Minister.

I find that the sureties are substantial having proved their identities,
15 connection to the applicant and fixed place of abode. I have also considered the age of the sureties and the fact that they reside in the same village as the applicant which will give them control over the applicant and ensure he attends court whenever called upon.

Article 28(3)(a) of the Constitution provides that all persons charged with
20 criminal offences are presumed innocent till proven guilty. Bail is thus meant to safeguard the applicant's right to liberty because he is presumed innocent till proven otherwise.

On the basis of the evidence put forward, court is satisfied that this is a case where it should exercise its discretion and grant bail to the applicant
25 pending his commitment to this court and trial.

3. Orders:

Bail is accordingly granted on the following conditions;

1) Cash bond of Shs. 2,000,000/-

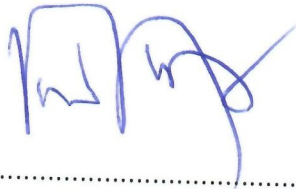


5 2) Each of the Sureties is bound in the sum of Shs. 10,000,000/- not cash.

3) The Applicant to report to the Registrar of the Court once a month on the first Monday of each month with effect from 04/03/2024 until otherwise directed by court.

I so order.

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Hon. Justice Dr Henry Peter Adonyo

15th February 2024

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