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The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Criminal Miscellaneous Application No. 44 of 2023

*(Arising from Criminal Session Case No. SOR-08-CR-AA. 29: KBD-CO-543: KBD CRB 264/2022)*

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Edolu David ..... Applicant

Versus

Uganda ..... Respondent

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Before: Hon. Justice Dr Henry Peter Adonyo

Ruling on Bail Application:

1. Background:

The applicant was charged and later indicted with the offence of murder, contrary to Sections 188 and 189 of the Penal Code Act, Cap. 120 as amended.

20 The particulars of the offence were that the applicant on 21/10/2022 at Ajikai 'A' village in Kaberamaido district, with malice aforethought unlawfully killed Ocaro Musa alias Ebom.

2. Legal basis of the Application:

25 The application is by a notice of motion under Articles 23(6)(a), and 28(3)(a) of the Constitution of the Republic of Uganda, 1995, (the Constitution), and Section 14(1)

5 of the Trial on Indictments Act, Cap 23 (TIA), for orders that the applicant be released on bail pending trial.

The application is anchored on grounds briefly stated in the application and enhanced in the supporting affidavit sworn by the applicant. That;

- 10 a) The applicant has a constitutional right to apply for bail on the terms and conditions the Court shall set.
- b) The applicant was committed for trial in this Court in an uncertain session.
- c) The applicant at the time of his arrest was the sole breadwinner of his family, which includes a wife and 7 minor children to whose welfare he is responsible for.
- 15 d) The applicant is presumed innocent until proven otherwise or until he pleads guilty.
- e) The applicant has a fixed place of abode in Ajikai "A" village, Aperikira parish, Aperikira subcounty in Kaberamaido district, which is within the jurisdiction of this court which is where he shall stay when released on bail and shall abide by the terms and conditions which this court shall set.
- 20 f) During his arrest, the villagers raided the applicant's home and destroyed most of his properties including his National Identity Card which explains why he does not have the same.
- g) The applicant does not have an LC1 introduction letter because the LC1 of his village in Ajikai 'A' declined to issue the same as their term of office had expired and they are awaiting elections.
- 25 h) The applicant shall not abscond if released on bail.

- 5 i) The offence of murder which the applicant is charged with is bailable by this Honourable Court.
- j) The applicant has three substantial sureties who understand their obligations towards this Honourable Court and are ready to be presented before the court for examination and approval.
- 10 k) The applicant has never abused any bail terms before, neither is he facing any other charges, and he will be committed to the conditions set by this Honourable Court.

The respondent objected to the instant application in an affidavit sworn by Okello Paul – a State Attorney in the ODPP’s Office – Soroti); he briefly stated that

- 15 a) The applicant is charged with the offence of murder which is a grave offence with a maximum penalty of suffering death as such the applicant is likely of jumping bail.
- b) The prosecution is ready with its witnesses to proceed any time if this case is scheduled for hearing but this application is intended to delay the
- 20 hearing of the case.
- c) Although the applicant has a constitutional right to apply for bail, the Court maintains the discretion to grant or not.
- d) The applicant has not attached any proof of his fixed place of abode.
- e) The respondent objects to the sureties because they are of a weak social
- 25 standing as peasants hence there is a high likelihood that they will not be able to answer to the recognizance pledged by the court.
- f) The respondent believes that this court is taking considerable measures to ensure that the committed applicant is cause-listed for trial as soon as possible and there is no need to dwell on uncertainties of when the case



5 shall be heard. all the necessary steps to fix the case against the applicant  
for hearing.

3. Submissions:

In arguing this application, the applicant and respondent filed their written  
submissions. I have considered the submissions, application, affidavits, attached  
10 documents, relevant legal authorities, and applicable laws while determining this  
application.

4. Decision:

The presumption of innocence is the primary principle for which a court may release  
an accused person on bail pending trial That presumption arises from Article 28(3)(a)  
15 of the Constitution of the Republic of Uganda, 1995) which provides that;

**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  
20 the Court to be released on bail, and the Court may grant that person bail on such  
conditions as the Court considers reasonable.**

In his affidavit, the applicant referred to his constitutional right to apply for bail as  
opposed to the respondent's contention that the court still reserves the right to  
grant or not grant bail in which the respondent prayed that the instant application  
25 be rejected.

5 Capital offences such as murder in this instant application are bailable; however, whether the court is inclined to exercise the discretion to grant or not is a matter which depends on the circumstances of each case.

Section 14(1) of the Trial on Indictments Act, Cap 23 enhances the position of Article 23(6)(a) of the Constitution in that it specifically empowers the High Court with  
10 discretion to release an accused person, at any stage of the proceedings, on taking from him or her a recognizance 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,  
15 under paragraph 5, provides the general principles in consideration of a bail application thus:

- a) The right of an applicant to be presumed innocent as provided for in article 28(3) of the Constitution;
- b) The applicant's right to liberty as provided for in article 23 of the Constitution;
- 20 c) The applicant's obligation to attend the trial;
- d) The discretion of the 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 interest of justice.

Additionally, under Section 15(1) of the Trial on Indictments Act, the Court may  
25 refuse to grant bail to persons charged with murder unless such accused/applicant proves, to the satisfaction of the court, that he or she will not abscond when released on bail and exceptional circumstances exist justifying his or her release.

5 The applicant stated in his affidavit that he will not abscond when released on bail, though he did not plead any exceptional circumstances which of course is no longer tenable as was held in the case of *Foundation for Human Rights Initiatives v Attorney General (Constitutional Petition No. 20 of 2006) [2008]* in which the court cited with approval the holding *Uganda vs Kizza Besigye Constitutional Reference No. 20 of 2005*  
10 where it was held that;

*"Both High Court and subordinate courts are still free to exercise their discretion judicially and to impose reasonable conditions on the applicant."*

Furthermore, Section 15(4) of the TIA provides that;

15 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.
- (b) Whether the accused has sound sureties within the jurisdiction to undertake  
20 that the accused shall comply with the conditions of his or her bail;
- (c) Whether the accused has no 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.

Having considered and taken into account the legal provisions as regards bail, I will  
25 now turn to the merits of this application in accordance with Section 15(4) of the TIA.



5 a) Fixed place of abode:

The applicant, under paragraphs 13 and 16 of his affidavit states that he has a fixed place of abode in Ajikai "A" village, Aperikira parish, Aperikira subcounty in Kaberamaido district, which is within the jurisdiction of this court which is where he shall stay when released on bail and shall abide by the terms and conditions which this court shall set. He also states under paragraph 15 of his affidavit that he does not have an LC1 introduction letter because the LC1 of his village in Ajikai 'A' declined to issue the same as their term of office had expired and they are awaiting elections but that he is a true resident of Ajikai village as can be confirmed from his indictment.

15 Asujo Deborah who was living with the applicant at the time of his arrest, swore a supplementary affidavit stating briefly that the villagers who were violent looted one of the houses in which they used to keep the National Identity Card of the applicant and that when he approached the LC1 chairperson of Ajikai 'A' for an introduction letter of the applicant, the chairperson first told her that their term of office had expired and therefore he couldn't issue an illegal letter but later told her that he did not want to be involved with anything to do with the court a reason for not issuing the applicant with an introduction letter.

In reply the respondent stated that the applicant has not attached any proof of his fixed place of abode.

25 Section 15(4) (a) of the Trial on Indictments Act underscores the importance of proof of a fixed place of abode as one of the determinants as to whether an applicant is likely to abscond once granted bail with the failure of proving the same possibly leading to a denial of bail.

5 The provisions of Section 15(4) (a) of the Trial on Indictments Act is augmented by  
paragraph 13(k) of the constitution (Bail Guidelines for Courts of Judicature)  
(Practice) Directions which relates to *'fixed place of abode.'*

While the law does not define the phrase *'fixed place of abode'*, my interpretation is  
that a fixed place of abode ordinarily must be one which is within the jurisdiction of  
10 the court. It means that one is traceable and is not likely to abscond and would easily  
attend court whenever required.

In this application, I note that the applicant has not attached an LC1 letter  
demonstrating to court as to his permanent place of abode. He has also not attached  
a copy of his National Identity Card alluding to the inability of his area LC1  
15 chairperson not giving him an introduction letter as shown by sworn supplementary  
affidavit of one Asujo Deborah who claims that the LC1 chair denied the giving of  
any introductory letter to the applicant on the unproven allegation that his term of  
office had ended and also did not want to be involved with anything to do with court  
as the reason for not issuing the letter.

20 The same Asujo Deborah together with the applicant further stated that the  
applicant's national identity card got destroyed when villagers looted their  
matrimonial home at the time of the applicant's arrest.

I find that this fact is not proven as the applicant did not attach any police letter to  
attest the same neither did the applicant nor is there any evidence that Asujo  
25 Deborah contacted the LC1 chairperson of Ajikai "A" village, Aperikira parish,  
Aperikira subcounty in Kaberamaido district in that respect.

On top of all the above inequities, the applicant does not provide any other  
independent evidence of proving his place of abode such as a tenancy agreement,



5 land sale agreement, bills and utility payment receipts etc. so that the court can ascertain and prove that he indeed has a fixed place of abode well within the jurisdiction of this Honourable Court. In the absence of these crucial documents, I would find and conclude that the applicant has not proved that he has a fixed place of abode within the jurisdiction of this court and as such this ground fails.

10 b) Substantial sureties:

By paragraph 17 of his affidavit in support of this application, the applicant states that he has three substantial sureties who understand their obligations towards this Honourable Court and who are ready to be presented before the court for examination and approval. In the affidavit in support of this application, the  
15 following are the proposed sureties;

- i. Egabu Tito, an in-law, a peasant farmer, NIN CM90054100UZOA, (a copy of the national identity card and LC1 Introduction letter dated 17<sup>th</sup> July 2023 annexed as 'B' and 'C' respectively).
- ii. Acuro Salume, an in-law, a peasant farmer, NIN CF66054100RV8C, (a copy of  
20 the National Identity Card and LC1 Introduction Letter dated 17<sup>th</sup> July 2023 annexed to the affidavit as 'D' and 'E' respectively).
- iii. Oriada Simon Peter, an in-law, a peasant farmer, NIN CM8212910012DL, (a copy of the National Identity Card and LC1 Introduction Letter dated 17<sup>th</sup> July 2023 Annexed to the affidavit as 'F' and 'G').

25 The proposed sureties are all residents of Katinge village Ocelakur parish, Ocelakur subcounty, Kalaki district noticeably, their area of residence is different from the applicant's area of residence which is Ajikai "A" village, Aperikira parish, Aperikira

5 subcounty in Kaberamaido district although both areas are within the jurisdiction of this Honourable Court.

On the other hand, the respondent objected to the substantiality of the sureties on the basis that the applicant in his affidavit disclosed all the sureties to be peasants which to the respondent is a weak social standing hence posting a high likelihood  
10 that they will not be able to answer to the recognizance pledged by the court.

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

Further, 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

- 20 (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  
(e) Any other factor as the court may deem fit.

25 (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 alien's identification card;

5 (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.

The applicant herein has revealed the ages of the sureties, their work, their  
10 relationship to him and their residence, however, due to his missing National Identity Card and his not providing any document evidencing his age, this court is not able to juxtapose the ages of the sureties to that of the applicant's age to determine whether the sureties are persons of such age as would render them with superior mature authority to execute their obligations in regard to the applicant  
15 even the sureties appear substantial for their having met most of the requirements/considerations.

#### 5. Conclusion

The applicant having failed to prove his fixed place of abode which should be within the jurisdiction by his not having provided a national ID and or other documentation  
20 like a police letter to proving the loss of his National identity card or any other document like a tenancy agreement, bill payments showing location of his place of abode or even a letter from other LC like LC2, I would find that he has not seriously moved this Honourable Court in proving that he is indeed having a permanent place of abode within the jurisdiction of this Honourable Court and that he is not likely to  
25 abscond from court when required. Hat being so and considering the seriousness of the offence of which he is charged with, I would find that this application lacks merits and is thus disallowed.



5 The applicant may in future apply to be considered for the grant of bail once he is able to prove that he has a permanent place of abode within the jurisdiction of this Honourable Court.

Meanwhile this application is dismissed for lack of merit.

I so order.

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Hon. Dr. Justice Henry Peter Adonyo

Judge

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14<sup>th</sup> February 2024