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The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Criminal Miscellaneous Application No. 53 of 2023

*(Arising from Criminal Case No. AA/10/2022)*

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1. Okiring Stephen

2. Omuron John Bosco

3. Osire Emmanuel

..... Applicants

Versus

Uganda ..... Respondent

15

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling on Bail:

1) Background:

Okiring Stephen, Omuron John Bosco and Osire Emmanuel (hereinafter referred to  
20 as "the applicants") were charged and later indicted with the offence of aggravated  
robbery contrary to Sections 285 and 286 of the Penal Code Act, Cap 120 as  
amended.

It is alleged that on 14<sup>th</sup> February 2022 at Ngora road, in Kumi district, the  
applicants/accused persons robbed Abdullah Rajab of a mobile phone techno smart  
25 and at, or immediately before, or immediately after the said robbery, used deadly

5 weapons to wit; knives, pangas, sticks with nails on the said Abdullah Rajab. The applicants were arrested, charged and detained. They were indicted in the following respects;

- a) Okiring Stephen, the 1<sup>st</sup> Applicant was committed for trial in the High Court on 10<sup>th</sup> August 2022 and has been on remand since 4<sup>th</sup> March, 2022.
- 10 b) Omuron John Bosco, the 2<sup>nd</sup> Applicant was committed for trial on 10<sup>th</sup> August 2022 and has been on remand since 4<sup>th</sup> March 2022.
- c) Osire Emmanuel, the 3<sup>rd</sup> Applicant was committed for trial on 10<sup>th</sup> August 2022 and has been on remand since 4<sup>th</sup> March 2022.

2) Legal basis of the Application:

15 The applicants brought this application by a Notice of Motion under Articles 20(2), 23(6)(a) and 28(1) and (3) (a) of the Constitution of the Republic of Uganda, 1995 (the Constitution) and Section 14 (1) of the Trial on Indictments Act Cap 23 for orders that the each of the applicants remanded for the offence of Aggravated Robbery be released on bail pending trial.

20 3) Grounds:

The application is anchored on the grounds which are stated in the application and enhanced by each of the supporting affidavits sworn by each applicant. However, the recurring main grounds in this application are that;

- a) The applicants have a constitutional right to apply for bail.
- 25 b) The applicants are presumed innocent until proven otherwise.
- c) The applicants have been in detention since; 4<sup>th</sup> March 2022 and each of the applicants was committed to the High Court for trial on 10<sup>th</sup> August 2022 but the hearing date has not yet been fixed.

- 5 d) Each of the applicants has two substantial sureties and they fully understand the duties and responsibilities of sureties and have undertaken to abide by all the terms and conditions that may be set by the Honourable Court and that they reside within the jurisdiction of this Honourable Court.
- 10 e) The applicants have different places of abode within the jurisdiction of this Honourable Court.

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

- 15 a) each of the applicants has availed 2 sureties with LC 1 recommendation letters that do not show whether the sureties have temporary or permanent residency rather has stated generally that “sureties are residents in those jurisdictions” which is vague as it lacks specifications. No documentary proof has been availed to show which residency the sureties have in those areas like payments of utility bills, rent, ownership documents.
- 20 b) Each of the applicants shall be put to strict proof to show that they have a fixed place of abode within the jurisdiction of the court.
- 25 c) The interest of justice has already been served by having all the three applicants committed to the High Court on 10<sup>th</sup> August 2022 and now await trial in the next convenient session which the respondent believes that this Honourable Court is making efforts to fix for hearing.



5 4) Submissions:

In arguing this application, the applicant and respondent mutually filed their written submissions. The court considers the submissions, application, affidavits, attached documents, relevant legal authorities, and applicable laws while determining this application

10 5) Decision:

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

**Every person who is charged with a criminal offence shall be presumed to be innocent  
15 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.**

20 In their affidavits in support of this application, the applicants refer to their 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 be rejected.

It is true that capital offences such as aggravated robbery as is the offence for which  
25 the applicants are charged with is bailable. However, whether the court is inclined to exercise the discretion to grant or not is a matter, depending on the circumstances of each case.

5     Additionally, Section 14(1) of the Trial on Indictments Act, Cap 23 which enhances  
the stance outlined in Article 23(6)(a) of the Constitution empowers the High Court  
of Uganda with discretion to release an accused person, at any stage of the  
proceedings, 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  
10     case, to appear before the Court on such a date and at such a time as is named in  
the bond.

Furthermore, The Constitution (Bail Guidelines for Courts of Judicature) Practice  
Directions, 2022, under paragraph 5, provides the general principles in  
consideration of a bail application thus:

- 15     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;**  
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  
20     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  
refuse to grant bail to persons charged with aggravated robbery unless such  
accused/applicant proves, to the satisfaction of the court, that he or she will not  
25     abscond when released on bail and exceptional circumstances exist justifying his or  
her release.

Further, Section 15(4) of the TIA provides;

5 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 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.

15 The above is the legal provisions as regards bail. I will now turn to the merits of this application.

a) Fixed places of abode:

The applicants state that they have fixed places of abode within the jurisdiction of this Honourable Court, thus;

- 20
- i. The 1<sup>st</sup> Applicant – Kabata cell, Kabata ward, North division, Kumi Municipality, Kumi district,
  - ii. The 2<sup>nd</sup> applicant – Kabata cell, Kabata ward, Kumi Municipality, Kumi district,
  - iii. The 3<sup>rd</sup> applicant – Angopet cell, Bazaar ward, North division, Kumi municipality, Kumi district.

25 According to counsel for the applicants' submissions, the stated fixed places of abode of each of the applicants are also indicated in the indictment and are also the residences of their biological parents who are also their proposed sureties.



5 On the other hand, the respondent submitted that having a fixed place of abode pre-supposes that one has without doubt proved this through availing supporting documentation like a land title, purchase agreement, payment of utilities, tenancy agreement unlike the applicants who merely provided LC1 recommendation letters and copies of National Identification cards which serve to show that they are known  
10 in the area but do not in any way prove they have a fixed place of abode and thus posit a high likelihood of abscondment because the applicants have failed to prove a fixed place of abode.

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 the applicant is  
15 likely to abscond once granted bail but also the failure of proving the same may render bail to be denied.

The above provision 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*', my interpretation is  
20 that a fixed place of abode ordinarily must be one which is within the jurisdiction of the court considering the bail application. In my considered view it means that one is traceable and is not likely to abscond as one would easily attend court whenever required.

Apart from each of the applicants stating the particulars of the places in which they  
25 state to each have a fixed place of abode, none of the applicants attached any LC1 introduction letter or any other document in regard to confirmation or attesting to their fixed places of abode.

5 Also apart from an indication in counsel's submission that they each reside with their  
parents, each of the applicants never stated that so in their affidavits and even a  
look at the LC1 letters in respect of their sureties, F2, F4, G2 , written for the sureties  
of the 1<sup>st</sup> and 2<sup>nd</sup> applicants, state the relationship of the respective surety and the  
applicant and then state that "both are residents within the area", but the sureties  
10 never averred that the applicants to be staying with their parents.

However, the LC1 letters G4, H2, H4 in respect to the sureties of the 2<sup>nd</sup> and 3<sup>rd</sup>  
applicants, address the sureties but apart from stating the relationship between the  
surety and the applicant, they do not indicate whether the applicants are residents  
of the areas.

15 Moreover, none of the applicants attached copies of their respective national  
identity cards.

Paragraph 13 (1) (k) of the Constitution (Bail Guidelines for Courts of Judicature)  
(Practice) Directions; Legal Notice No. 8 of 2022 details the considerations for bail  
by the court and includes *whether the applicant has a fixed place of abode within*  
20 *Uganda.*

In the case of *Kanyamunyu Matthew Muyogoma versus Uganda Miscellaneous*  
*Criminal Application No. 0177 of 2017*, the court stated that;

25 *"The onus is on the Applicant to satisfy that he has a permanent place of  
abode in a particular village, sub-county and district. This is to enable the  
court exercise jurisdiction over the applicant while on bail being able to  
trace his whereabouts whenever it is necessary".*



5 A fixed place of abode for each of the applicants must be one that is traceable and is within the jurisdiction of this honourable court as this is pertinent to guarantee to the court that the applicant is traceable and can be found in the event of the applicant absconding from court. This requirement is underscored as being an important provision and a ground for refusal to grant bail as is reflected in Section  
10 15(4) of the Trial on Indictments Act which is instructive as it provides that;

Section 15. Refusal to grant bail:

- 1) **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—**
- 15 4) **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;**(Emphasis mine)

Therefore, in the absence of the LC1 letters and National Identity Cards with respect  
20 to each of the applicants, I would find that the applicants have failed to prove that they have fixed places of abode within the jurisdiction of this court as they have not provided the assurance that traceable whenever required in court. This ground thus fails.

the stated respective areas.

- 25 b) Substantial sureties:

The applicants each have provided proposed two substantial sureties. Suffice it to note that the term “surety” is defined by Paragraph 4 of the Constitution (Bail

- 5    Guidelines for Courts of Judicature) (Practice) Directions; Legal Notice No. 8 of 2022  
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  
the State if the applicant fails to appear in court. Therein is the main duty of a surety.**

The applicants herein provide the following proposed sureties;

- 10        1) Okiring Stephen – 1<sup>st</sup> applicant:  
            a) Arionget Jennifer Harriet – mother  
            b) Odelok John Charles – paternal uncle  
            2) Omuron John Bosco – 2<sup>nd</sup> applicant:  
            a) Ocoobe Gabriel – father  
15        b) Oumo Simon – paternal uncle  
            3) Osire Emmanuel – 3<sup>rd</sup> applicant:  
            a) Okoche Paul – father  
            b) Ajemo Mary – Mother

20        The relationships of the proposed sureties to the applicants are known and they are  
said to have undertaken to abide by all the terms and conditions that may be set by  
the Court. They also reside in the jurisdiction of this honourable court.

25        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 within the jurisdiction to undertake that  
the accused shall comply with the conditions of his or her bail

5 Also 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
  - (a) The age of the surety;
  - (b) Work and residence address of the surety;
  - 10 (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-
  - 15 (a) A copy of his or her national identity card, passport or alien's 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
  - 20 Prime Minister.

I have perused the submissions and affidavits, counsel indicated that they have been advised of their roles as sureties, they attached LC1 letters (F2, F4, G2, G4, H2, H4) laying credence to their respective places of abode which has been seen and noted by the court and they attached their National Identification Cards which identify  
25 them and the averments of their relationships to the respective accused persons which means that they can exercise responsibility over the applicants.



5 Counsel also indicated that he explained to the sureties of their obligations and the consequences of failure to ensure that the accused persons attend court and that the sureties all understood their overarching responsibilities.

The respondent submitted that the applicants have dwelt on the blood relationship with the sureties but have not in any way provided evidence to show whether any  
10 of the sureties is gainfully employed or works which would determine the financial muscle in the event that such cash bail conditions were to be imposed by the court. This court observes that none of the applicants, indicated where their respective sureties work but since they averred the relationship with the sureties, the relationship and residencies would suffice.

15 I find the sureties have been properly and soundly identified and thus are substantial.

c) Antecedents:

In the case of *Foundation for Human Rights Initiative vs. Attorney General Constitutional Petition No. 020 of 2006*, it was held that the nature of the offence,  
20 antecedents of the applicant and whether the applicant has a fixed place of abode in the Court's jurisdiction should be strongly considered by court in an application for bail.

The antecedents of the applicants have not been brought to the attention of the court either by the respondent or someone else.

25 4. Conclusion:

Since each of the applicants failed to show or prove their fixed places of abode by LC1 letters and they each have also not submitted to the court their respective

5 National IDs for identification in addition to the fact that their antecedents have not  
been brought to the attention of the court either by the respondent or someone  
else, then it is my finding and conclusion that each of the applicants has failed to  
prove to the court that they have a fixed place of abode within the jurisdiction of  
the court and that their antecedents are unknown. These facts being so casts doubt  
10 in their prompt and regular return to court since bail is merely but a temporary  
freedom from incarceration.

The circumstances being so, I would conclude that this application for bail lacks  
merit and thus I am unable to exercise my judicial discretion so as to grant of bail to  
each of the applicant in accordance with the command of the Constitution of the  
15 Republic of Uganda and the Constitution (Bail Guidelines for Courts of Judicature)  
Practice) Directions, 2022, No. 5 (d). This application is thus not allowed.

I so order.

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Hon. Justice Dr. Henry Peter Adonyo

Judge

14<sup>th</sup> February 2024