

4. Counsel Nakatude Maria State Attorney attached to Office of the Director of Public Prosecutions, Mbale opposed this Application on the grounds as follows-
- (a) That the Applicant is charged with the offence of murder C/S 188 and 189 of the Penal Code Act which attracts a death penalty sentence and conviction and when released on bail, there is a possibility of absconding which will prejudice the trial.
 - (b) That the Applicant has already been committed to the High Court for trial hence, the prospects of having the matter heard in the next criminal session is high.
 - (c) That the Applicant is likely to interfere with the key witnesses who are well known to him.
 - (d) Regarding the place of abode, counsel stated that there is no proof attached to prove permanent resident. The letter of LC.1 does not prove permanency since the national water receipts attached are for 2010.
 - (e) On the presumption of innocence, counsel averred that it is in the interest of justice that the presumption of innocence is balanced against the interests of the victim, complainants and society at large
 - (f) Counsel added that the grant of bail and the Application has to show exceptional circumstances to justify the granting of bail.
 - (g) She averred that given the gravity of the offence we pray that the Applicant is denied bail and the case be fixed for hearing at the next convenient date.
5. In rejoinder Applicant averred that-
- (a) That the Constitutional right of presumption of innocence cuts across all charges including murder and as such even on a charge of murder an accused can be granted bail,
 - (b) That his likelihood of absconding if granted bail is speculative as there is no past record of him escaping,
 - (c) That there is no proof and certainty on when the next convenient session will sit and that mandatory bail remains a constitutional right which was not taken away by the fact that there would be a next convenient session,
 - (d) That the Respondent cannot expect him to have utility bills, a tenancy agreement or a land title in his name when he stated clearly that he was staying with his mother and he is only 20 years old,
 - (e) That he has attached water bills in the names of his late father and the agreements of land which he purchased before he died now being managed by his mother on behalf of the family as proof of residence.

6. **Legal Representation**

7. The Respondent was represented by Counsel Nakatude Maria State Attorney while Counsel Luchivya Faith represented the Applicant.



8. Submissions

9. Both Counsel made oral submissions at the hearing of this Application which this Court has considered in the determination of this Application.

10. Analysis of Court

11. The right to bail is a fundamental right guaranteed under **Article 23 (6) of the Constitution of the Republic of Uganda, 1995** which provides that-

“Where a person is arrested in respect of a criminal offence-

(a) The person is entitled to apply to court to be released on bail and the court may grant that person bail on such conditions as the court considers reasonable.

(b).....

(c) In the case of an offence triable only by the High Court, the person shall be released on bail on such conditions as the court considers reasonable, if the person has been remanded in custody for one hundred and eighty days before the case is committed to the High Court”

12. It should be noted that the purpose of bail is to protect one's right to personal liberty which is premised on the presumption of innocence as provided for under Article 28(3) of the Constitution of the Republic of Uganda, 1995. Therefore, a bail Applicant ought not to be deprived of his or her freedom unreasonably.
13. It is trite that courts have discretion whether to grant bail to an accused person or not as provided under **Article 23 (6) (a) of the Constitution of the Republic of Uganda, 1995** and **section 14 of the Trial on Indictment Act**. The same principle was reinstated in **Foundation for Human Rights Initiative V Attorney General Supreme Court Constitutional Appeal No.3 of 2009**.
14. The issue regarding the gravity of the offence with which the Applicant is charged with which is murder, is not by itself a bar to his release on bail if he satisfies all the conditions required by court, since the law presumes him innocent until proved guilty or until he pleads guilty. In the circumstance, it would not be right for this court to deny the Applicant bail for fear that he will abscond.
15. According to Article 23(6) (c) of the Constitution of Uganda (Supra), the Applicant would only be entitled to mandatory release on bail where he has been in prison for more than 180 days before committal to High Court. The Applicant in his affidavit in support averred that he was arrested on 2nd September 2022 and committed to High Court on 13th

February, 2023, which means he had not spent 180 days in prison as required by the law.

16. **Whether the Applicant has a Fixed place of abode**

17. In order to prove that the applicant has a fixed place of abode, court must be satisfied by evidence of where he resides with some degree of permanency. In **Mugenyi Steven V. Uganda, High Court Criminal Misc. Application No. 65 of 2004**, It was held that-

"The onus of proof is on the Applicant to satisfy court that he has a permanent place of abode in a particular known village, Sub-county, County and District."

18. In the instant case, the Applicant in a bid to prove his fixed place of abode within this court's jurisdiction he attached a copy of the LC1 introduction Letter from Manafwa Lower Cell, Buwalasi Ward, Busiu Town Council, Mbale District where he stays in their ancestral home with his biological mother who in her supplementary affidavit in support of the Application attached a copy of her national identity card, LC1 introduction letter from the same place, national water receipts of the said home, the purchase agreement of the said home in the names of the Applicant's late father and proof of death of the Applicant's late father.

19. Counsel for the Respondent in her submissions objected to the national water receipts attached by the Applicant arguing that they are not current.

20. In **Miscellaneous Application No. 177 of 2017 Kanyamunyu Mathew Muyogoma Vs. Uganda**, it was stated that-

"a fixed place of abode can be proved by a sale agreement, tenancy agreement, certificate of title and utility bills like water and electricity".

21. I agree with the above position. It should however be noted that the purpose of a sale agreement, tenancy agreement or utility bills is to prove some degree of permanency. The issue of the old utility bills would be relevant if the Applicant was a tenant but he is not. Be that as it may, in addition to the utility bills, the Applicant further attached a land purchase agreement in the names of his late father, being a student who still stays with his mother.

22. To this court, the evidence tendered by the Applicant to prove his place of abode is sufficient.



23. **Whether the Sureties are substantial?**
24. In determining the suitability of a surety, courts consider the age of the surety, work and residential address of the surety, character and antecedents of the surety, relationship to the accused person and any other factor the court may deem fit. **See Paragraph 15 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022**
25. According to the **Halsbury's Laws of England 4th Edition Volume II page 112-133 at paragraph 166**, a surety to be considered substantial he or she must be able to influence, supervise and control the applicant.
26. The Applicant adduced three sureties who undertake to stand for him and to supervise him while on bail.
27. The first surety is **Kachifu Eva** who is the Applicant's biological mother. She attached proof of her fixed place of abode within this Court's jurisdiction as already discussed above.
28. The 2nd surety **Balibali Mike Lester** is the Applicant's elder brother who through his supplementary affidavit in support of the Application attached a copy of his LC1 introduction letter, national identity card and copies of his business registration documents as proof of his fixed place of abode at Manafa lower cell, Buwalasi Ward, Busiu Town Council, Mbale District.
29. The 3rd surety **Kaduyi Moses** is the Applicant's cousin brother who through his supplementary affidavit in support of the Application attached a copy of his LC1 introduction letter, national identity card and his land purchase agreement situate at Namanyonyi sub-county as proof of his fixed place of abode at Kifafa Upper Cell, Namagumba Ward, North Division, Mbale City.
30. Considering the sureties are related to the Applicant and they are in close proximity with him, older than the applicant and have proved fixed places of abode within this court's jurisdiction, I am satisfied that the Applicant's sureties are substantial.
31. The Applicant did not plead any exceptional circumstances.
32. In the premises, I have been inclined to grant the Applicant bail on the following terms-
- (a) The Applicant shall pay a cash bond of **Ugx: 2,000,000/=**.
 - (b) The 1st surety (mother of the Applicant) shall deposit in court the original land purchase agreement of their home for custody by the Deputy Registrar of this court until final disposal of MBA-00-CR-AA-64-2022.



- (c) Each of the sureties shall sign a non-cash bond of Ugx: **20,000,000/=** (twenty million shillings)
- (d) The Applicant shall report to the Deputy Registrar of this Court every month, starting on 22nd of April, 2024.

I so order

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LUBEGA FAROUQ
JUDGE

DATE: 21ST MARCH 2024