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- (c) There is therefore a high likelihood of him absconding and rendering the trial impossible once granted bail.
- (d) It is not true that the Applicant has a fixed place of abode as there is no proof attached in the form of land title or any other valid document,
- (e) It is not true that the Applicant has substantial sureties, and the attached documents are not themselves proof of substantiality.
- (f) The Applicant has not advanced any ground to show that he suffers from any of the exceptional circumstances to warrant this Court to grant of him bail.

5. **Legal Representation**

- 6. The Respondent was represented by Counsel Nakatude Maria State Attorney attached to Office of the Director of Public Prosecutions; Mbale while Counsel Bwayo Dison Emmanuel represented the Applicant.

7. **Submissions**

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

9. **Analysis of Court**

- 10. **Article 23 (6) of the Constitution of the Republic of Uganda, 1995** 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"

- 11. **Article 28 (3) of the Constitution (supra)** provides-

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

- 12. It is therefore pertinent to note that the purpose of bail is to protect one's right to personal liberty which is premised on the presumption of innocence as provided in the Article above cited. The same principle was

reinstated in the case of **Col (Rtd) Dr. Kizza Besigye Vs Uganda Criminal Application No.83 of 2016**. Therefore, an Applicant for bail should not be deprived of his or her freedom unreasonably.

13. The gravity of the offence with which the Applicant is charged with is Aggravated Robbery but the same is not by itself a bar to the release of the Applicant on bail if he satisfies all the conditions required by court. It would therefore not be right for this court to deny the Applicant bail for fear that he will abscond.
14. According to **Article 23 (6) (a) of the Constitution of the Republic of Uganda, 1995, section 14 of the Trial on Indictment Act** and the case of **Foundation for Human Rights Initiative V Attorney General Supreme Court Constitutional Appeal No.3 of 2009**, courts have discretion whether to grant bail to an accused person or not.
15. **Whether the Applicant has a fixed place of abode.**
16. In **Monje Stephen Vs Uganda Criminal Miscellaneous Application No.62 of 2023**, a fixed place of abode connotes a place where a person resides with some degree of permanency e.g., a certificate of titles, land purchase agreements, utility bills a letter from the clan head in case of customary ownership or communal land.
17. The Applicant in a bid to prove that he has a fixed place of abode within court's jurisdiction attached a copy of the LC1 introduction of Mutti Cell, Malukhu ward, Industrial Division, Mbale City and school identity card of University Link Secondary School in Mbale City.
18. The evidence to prove a fixed place of abode was objected to by Counsel for the Respondent on the basis that the documents submitted do not prove ownership or permanency of the Applicant.
19. In rejoinder counsel for the Applicant submitted that since the Applicant is young and was a student at the time of arrest, there is no way he would have acquired documents like land titles and purchase agreements but his residence is traced from that of the 1st surety who is his grandmother.
20. From the foregoing, the Applicant's grandmother who is a tailor at Mbale Central market with whom he resides with attached a copy of her national identity card and LC1 introduction letter from Mutti Cell, Malukhu ward, Industrial Division, Mbale City to prove her fixed place of abode.



21. In the circumstances, I find that the Applicant has failed to prove that he has a fixed place of abode within this Court's jurisdiction for reason that the documents submitted by his grandmother with whom he resides with, do not prove any degree of permanency in that place.
22. **Whether the Applicant's sureties are substantial**
23. It is trite that 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**
24. In **Halsbury's Laws of England 4th Edition Volume II page 112-133 at paragraph 166**, it was stated that for a surety to be considered substantial, he or she must be able to influence, supervise and control the applicant.
25. In the instant Application, the Applicant adduced three sureties who undertake to stand for him and to supervise him while on bail.
26. The first surety **Lawil Jessica O Nyamogi** is the Applicant's grandmother with whom the Applicant resides with at Mutti Cell, Malukhu ward, Industrial Division, Mbale City.
27. The second surety **Anuso Joyce Christine** is the Applicant's biological mother who resides at Primary Cell, Malukhu ward, Industrial Division, Mbale City.
28. The third surety **Okwi Robert** is a maternal uncle to the Applicant who resides at Primary Cell, Malukhu ward, Industrial Division, Mbale City.
29. In the circumstances, I find the sureties presented sufficient for reason that they are closely related with the Applicant in close proximity and are older than him, which convinces me that they can easily monitor and supervise him while on bail so that he complies with the bail terms which may be set by this Court.
30. The Applicant did not plead any exceptional circumstances
31. It should be noted that once an accused person has been on remand for more than 180 days before committal to the High Court, he or she is entitled to a mandatory release on bail. In the Applicant's averments, it is indicated that the Applicant has been on remand since March 2023 which

is equivalent to 365 days (a year) and has not yet been committed for trial. Hence, there is no indicator that his case will be hard in the shortest time possible.

32. It is also important to note that it is not true that the Applicant was already committed for trial to the High Court as alleged by the State, since there are no committal documents or committal proceedings on file. Failure by the State to complete its investigation within the pre-trial detention period goes to the root of violation of the accused's right to liberty which is guaranteed by the Constitution.
33. In the final result, I have been constrained to exercise my discretion to grant the application on the following conditions-
- (a) The Applicant shall pay a cash bond of **Ugx: 2,000,000/=**.
 - (b) Each of the sureties shall sign a non-cash bond of **Ugx: 20,000,000/=** (twenty million shillings)
 - (c) The Applicant shall report to this court every calendar month before the Deputy Registrar starting on 22nd of April, 2024.
 - (d) The file should be returned back to the lower court to complete committal proceedings.

I so order


.....
LUBEGA FAROUQ
JUDGE

DATE: 21st March 2024