

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA  
ANTI CORRUPTION DIVISION  
HCT-00-CN-0024/2015**

**UGANDA** ::  
**RESPONDENT**

**VS**

**SERWAMBA DAVID MUSOKE & 7 ORS** :::::::::::::::  
**APPLICANTS**

**RULING**

This application comes to this court by Notice of Motion. Before me are eight persons who seek to be granted bail. These eight are:

1. Serwamba David Musoke
2. Kalungi Abubaker
3. Shafik Mubarak
4. Keeya Mathew
5. Serwamba Isaac
6. Mugisha Joseph
7. Matovu Kenneth
8. Lubega Bernard

The motion shows that the application is brought under Articles 23(6) (a) and 28(3) of the Constitution and goes on to invoke sections 14 and 15 of the Trial on Indictments Act. There are nine grounds advanced why this application should be granted. This is meet point to state that the application states that it is supported by the affidavit of one Bezire Frank, applicant Mugisha Joseph’s father. Both the application and the

affidavit aforesaid were filed in this court on 19<sup>th</sup> June 2015 and the necessary fee was paid.

On 23<sup>rd</sup> June 2015 court received more affidavits bearing the court registration number of this application. Clearly those affidavits were sworn by Serwamba David Musoke (1), Kalungi Abubaker (2), Shafik Mubarak (3) and Serwamba Isaac (5). For the record Keeya Mathew (4), Matovu Kenneth (7) and Lubega Bernard (8) had no affidavits filed on their behalf and no submission whatsoever was made on their behalf regarding this application. It follows therefore that no reason exists for me to relate further to those three regarding this application.

I observed earlier that the application under consideration was filed on 19<sup>th</sup> June 2015 and that it was supported by an affidavit sworn by one Bezire Frank. The notice of motion bears testimony to this. The four other affidavits on the file were added four days later. It is worthy of note that the affidavit supporting the motion nowhere relates to applicants besides Mugisha Joseph (6). Indeed counsel for the applicants offered no explanation to relate the apparent latecomers to the original application. It is noteworthy however that names of the eight applicants who appeared in court are apparent on the motion as applicants. There is no way they can relate to the motion when it is clearly put in the pleadings that the application is supported by the one affidavit featured. Perhaps a different application or different applications would have dealt with the case of the affidavits. A fee was paid to institute the application on 19<sup>th</sup> June 2015. No such fee was paid respecting the filings of 23<sup>rd</sup> June 2015. This court cannot brook an illegality let alone be instrumental in its perpetuation. In **Makula International Limited v Emmanuel Cardinal Nsubuga** [1982] HCB11 court's reluctance to accommodate an illegality was stressed.

Given the considerations above the cases related to by belated affidavits cannot be entertained the way they are.

There remains then the application of Mugisha Joseph to consider. I agree with the submission of counsel for the applicant regarding the effect of Article 23 of the Constitution in that it subsumes the provisions of sections 14 and 15 of the Trial on Indictments Act. This application must therefore be viewed in that light. Nevertheless court must bear certain considerations in mind such as the gravity of the offence, the nature of the accusation, the antecedents of the applicant so far as they are known, whether the applicant has a fixed place of abode within the area of court's jurisdiction and whether the applicant is likely to interfere with witnesses or evidence. Another consideration of course is whether the applicant has furnished sufficient sureties. Needless to say what should be at the back of one's mind is whether once granted bail the applicant will be available to attend court as and when required; that he will not abscond.

In this application there is no indication anywhere that the applicant has a permanent place of abode. This omission is very significant. I have taken into account the charges he faces as well as the amount of money said to be involved. Court would require assurance that given the circumstances of the applicant in this case he will not be tempted to abscond. It is for a similar consideration that the applicant would need to furnish sureties who are substantial in order to stand as guarantors of his undertaking regarding bail.

For now the application fails.

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**Paul K. Mugamba**

**Judge**  
**30<sup>th</sup> June 2015**