

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CR-MA-0004-2004

(Arising from MBR-00-CR-CO-131-2003)

MUSIIME ALEX Alias KADIDI.....APPLICANT

-VS-

UGANDA.....RESPONDENT

BEFORE: THE HON. JUSTICE P.K. MUGAMBA

RULING

This is an application for bail which is brought under the open-ended Article 23 of the Constitution of Uganda. It is not so clear why this was the choice procedure. Be that as it may the applicant brought in mitigation facts relating to his ill health which was said to be grave by both Achieng and Dr. Luwala. It is contended by the applicant that exceptional circumstances do therefore exist for his release on bail vide S. 15 of the Trial on Indictment Act, Cap. 23 of the Laws of Uganda. An accused suffering from grave illness is therein required to be so certified by a medical officer of the prison or other institution or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody.

An affidavit sworn by Ms Achieng was introduced. She is said to be in charge of matters of health at the Mbarara Prison. She added further in her affidavit that she had sworn the affidavit in ‘verification and proof of the fact that the said Musiime Alex Alias Kadidi suffers from grave illness namely peptic ulcers and asthma’. Section 15 of the Trial on Indictments Act envisages a medical officer and no one else to certify grave illness. Nothing useful emerges from Ms Achieng’s averment therefore as she is by no means a medical officer.

It is Dr. Luwala who is a medical doctor. He qualifies to the status of a medical officer. His affidavit was to the effect that he is a medical doctor at Luwala Nursing Home in Mbarara. He stated that he has been a personal doctor to the applicant ever since 1996. It was not revealed

whether that was on a retainer. He certified the peptic ulcers and asthma the applicant suffers from to be grave illness. He added that the ailments necessitate constant medical attention and treatment which he is not able to offer the applicant while he is in prison because of lack of ready access to the doctor whenever he requires the doctor's help.

I note that the appellant was first held on remand on 24th September 2003. Ever since then he has not had access to his doctor though it is not made clear when he attempted to do so and was prevented by anybody.

In the circumstances I give order to the Prison authorities to allow the applicant to summon and receive the services of his doctor without let or hindrance in order to alleviate the applicant's present circumstances.

Given that order there should be no need for consideration of grant bail. I so find and order.

P.K. Mugamba

Judge

10th March 2004

Mr. Ngaruye for applicant

Applicant in court

Ms. Amumpaire State Attorney

Court:

Ruling read in court.

P.K. Mugamba

Judge