

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
CRIMINAL MISC. APPLICATION NO.100 OF 2007**

**HON. JIM K. MUHWEZI:.....:APPLICANT
VERSUS
I.G.G.:RESPONDENT**

RULING

The Applicant, Hon. Jim K. Muhwezi, has applied to this Court to be released on bail pending his trial. On 28.5.07 he appeared before the Chief Magistrate's Court of Buganda Road and took pleas to:

- i. Abuse of office c/s 87(1) and (2) of the Penal Code Act.
- ii. Causing financial loss c/s 269(1) of the Penal Code Act.
- iii. Embezzlement c/s 268 of the Penal Code Act.
- iv. Theft contrary to section 254 of the Penal Code Act.

He pleaded NOT GUILTY and was remanded at Luzira Prison until 6.6.2007. His application was brought by Notice of Motion under Articles 23(6) (a) and (b) and 139(1) of the Constitution of Uganda (1995), sections 14(1), 15(1), (2) (d), (f), (g) and **(j)**, (3) and (4) of the Trial on Indictments Act (TIA).

The grounds of the application are:

- a) That the Applicant has sufficient Sureties to stand for him.
- b) That the Applicant is a respectable member of society, currently serving as Member of Parliament, and recently served as a Cabinet Minister; that it is unlikely that he can abscond if granted bail.
- c) That the Applicant will not interfere with any criminal investigations; that the IGG has already compiled a report.
- d) That exceptional circumstance exist to justify the Applicant's release on bail.
- e) That the Applicant is of advanced age.
- f) That it is just and equitable that the Applicant be released on bail.

This application is supported by an affidavit sworn by the Applicant dated 29th May, 2007, to which many annexures were attached.

The application was opposed by the Respondent, and an affidavit in reply sworn by James Penywii, the Director of Operations at the IGG, dated 30th May, 2007 was filed.

The applicant relied on advanced age, an exceptional circumstance required under S. 15(1) (a) and (3) (c) of the TIA. To prove his advanced age, the Applicant referred to Para.2 of his affidavit. It was stated in that Paragraph thus:

“2. That I was born on 28th day of August 1950 (A copy of Passport entailing my personal details is attached and marked “A”).

Ordinarily, age may be proved:

- i. By production of a birth certificate.
- ii. By an affidavit sworn by a parent or other close relative who personally knows the facts.
- iii. By production of a Medical Report from a Doctor who has examined the person for purposes of establishing the age.
- iv. Certified copies of an entry in the register of births within the meaning of section 22 of the Births and Deaths Registration Act [Cap.309].

In my view it is not of any Probative value to any inquiry concerning age for the subject matter of such inquiry to state that he/or she was born on a particular date. Such a statement is inherently unreliable unless an authentic source of information is quoted or disclosed. Every person has to rely on some source of information concerning his/her date of birth.

In the instant case the Applicant also relied on his Passport No.DA 022148 issued on 25.04.2006 which states his date of birth as 23.08.1950. Learned Counsel Mr. Harrison Ahimbisibwe, for the Respondent, declined to comment on the Passport as evidence of the date of birth.

A Passport is issued under the Passports Act (Cap.64). It is a travel document. Under section 10 of the Act any person applying for a Passport has to produce evidence to the effect that he or she is a citizen of Uganda. Under this law mentioning a date of birth is merely incidental to the process. In my view a Passport cannot take the place of a certified extract of an entry in the Register of birth. At best reference to a Passport for a date of birth is reference to a Particular occasion in the past when the person concerned had to state his/her birth date, and may be had no reason to lie about it.

In the instant case, I have found annexed to the Applicant's affidavit documents which show that the Applicant had occasions in the past when he stated his date of birth to his personal Doctors, and he had no reason to lie about it.

Annexure C2 is dated 31st January 2003, a letter written by Dr. Edward Ddumba, Senior Consultant Physician, where the Applicant was said to be aged 52 years. On 7th January, 2003, Dr. Zina, a Cardiologist of Uganda Heart Institute Ltd, Mulago Hospital stated the Applicant's age as 52 years.

The Applicant has given the same date 23.08.1950 as his date of birth to CROMWELL HOSPITAL in London. Doctor Joe Mugisha of Charlton Avenue, Walton on Thames Surrey has stated the Applicant's age as 56 years as on 25.5.2007.

In my view consistency has added credence to the Applicant's statement of his age. So, I now believe the evidence adduced of the Applicant's age put at slightly over 56 years.

This Court has repeatedly held that any age above 50 years may be considered to be advanced age. This is usually coupled with the actual facial looks of the person concerned. I, therefore, hold that the Applicant has proved to the satisfaction of this Court that he is of advanced age.

In Par. 13 of his affidavit, the Applicant deponed thus:

“13. That I suffer from high blood pressure and diabetes and in 2002 suffered a stroke, after which I was referred to John Hopkins Medical Centre UK for evaluation and treatment”.

I have also seen Annexure C1, a letter dated 28.01.2003 written by Dr. E. Ddumba addressed to the Chairman Medical Board. I have noted the opening line which I quote: **“ I am writing to the Board to request for permission to refer Hon. Brigadier Jim Muhwezi, Minister of Health, for treatment abroad”.**

I also quote the last Paragraph of the same letter. It stated:

“ He is expected to stay for three weeks and will be accompanied by his wife. The total deposit required is US \$ 48,490.07”.

I am not inclined to rely on such documents and the submissions of learned Counsel Mr. Oscar Kambona to declare that the Applicant cannot be treated in any hospital in Uganda.

The legal Provision contained in S. 15(3) of the TIA established a standard which is applicable to all persons and that is:

**“(a) grave illness certified by a Medical Officer of the prison-----
as being incapable of adequate medical treatment while the Accused is in
custody”.**

I should have thought that prison is a leveller, meaning that it makes every one seen equal; or affects people of every class or rank in the same way. This must be the reason for the legal requirement that a Certificate concerning a person’s grave illness and the Prison’s incapacity to provide adequate medical treatment to an inmate should come from a Medical Officer in that very prison. I need not labour this point since the Applicant has proved another exceptional circumstance. Given another opportunity, I will decide on how to treat a Certificate from Cromwell Hospital, London.

For the consideration whether or not the Applicant is likely to abscond, the Court has been presented with:

- i. The statement in Para.3 of his affidavit that the Applicant is married and blessed with seven children; and that he has ten dependants; and that he has a fixed place of abode at Plot 46 Malcom X Road, Kololo in Kampala District.
- ii. Three Sureties in the persons of:
 - a) Hon. Amanywa Mushega, former Secretary General of the East African Community, and former Minister of Education.
 - b) Hon. Major General (Rtd) Kahinda Otafiire, currently Minister of Local Government;
 - c) Hon. Mwesigwa Rukutana, Minister of state for Gender, Labour and Social Welfare; and
 - d) Hon. Winnie Matsiko, MP for women in Rukungiri District.

Learned Counsel for the Respondent did not object to any one of them. The Court considers all of them quite substantial, acceptable and sufficient.

There is no evidence that the Applicant has on any occasion ever jumped bail.

I have also noted from Para. 6 of the affidavit in reply sworn by James Penywii that there are no other pending criminal charges against the Applicant. It was stated in the same affidavit in reply in Para.5 that the Respondent has now completed investigations and wants the trial to commence.

It is my view that the Applicant has satisfied the requirements of S. 15(1)(a) and (b), (3) and (4) of the TIA. I find the Applicant a fit and proper person to be granted bail. I hereby grant him bail on the following conditions:

- i. The Applicant is to enter into a bond with the Registrar (crime) in an amount of Shs.20Million Not cash, guaranteeing that he will duly attend the Chief Magistrate's Court to answer the charges Preferred against him.
- ii. Each of the four sureties presented to Court will enter into a Bond with the Registrar (Crime) in an amount of Shs.5Million Not cash guaranteeing that the Applicant will attend the Chief Magistrate's Court at Buganda Road to take his trial.
- iii. The Applicant must surrender his Passport to the Registrar (Crime).
- iv. The Applicant, after his release on bail, must report to the Registrar (Crime) twice every month. on every 1st Monday and every last Monday of the month.
- v. This grant of bail covers all charges currently pending against the Applicant in the Chief Magistrate's Court at Buganda Road, and the Applicant should report to the Chief Magistrate's Court at Buganda Road on the day fixed for mention of his case, that is
6. 6. 2007.

Orders accordingly.

Hon. Justice Moses Mukiibi

JUDGE

31. 5. 2007

At 4.30pm today.

Mr. Oscar Kambona, Mr. Chris Bakiza and Mr. Patrick Yehangane - for Applicant.
Applicant is in Court.

Ms. Lillian Mwandha, Mr. Harrison Ahimbisibwe and Ms. Sarah Birungi - for
Respondent.

Ngobi: Court Clerk.

Court:- The Ruling is delivered in Open Court.

Hon. Justice Moses Mukiibi

JUDGE

31.5.2007