

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT**  
**KAMPALA**  
**CRIMINAL MISC. APPLICATION N0.096 OF 2007**

**ALICE KABOYO :::::::::::::::::::::::::::::::::::APPLICANT**  
**VERSUS**  
**I.G.G. ;;RESPONDEINT**

**RULING**

The Applicant, Alice Kaboyo, has applied to this Court to be released on bail pending her trial. On 23.5.07 she appeared before the Chief Magistrate's Court of Buganda Road and took plea to:

- i. Theft c/ss 254 and 261 of the Penal Code Act.
- ii. Abuse of office c/s 87(1) and (2) of the Penal Code Act.
- iii. Forgery of an official document c/ss 349, 345(A), (D) (I) and (IV) and 342 of the Penal Code Act.
- iv. Forgery of an official document c/ss 349, 345(A) (D) (I) and (IV) and 342 of the Penal Code Act; and
- v. Uttering false Documents c/s 351 of the Penal Code Act.

She pleaded NOT guilty and was remanded at Luzira Prison until 6.6.2007.

Her application was brought by Notice of Motion under S. 14(1) and 15(2) (d) & (g) of the Trial on Indictments Act and Article 23(6) (a) of the Constitution of Uganda.

The grounds of her application are:

- a) That the offences with which the Applicant is charged is bail able by the High Court.
- b) That the Applicant believes that she is innocent and has a good defence to the accusations.
- c) That the Applicant has substantial Sureties.
- b) That it is just and equitable that the Applicant be released on bail.

The application was supported by an affidavit sworn by the Applicant dated 23<sup>rd</sup> May, 2007.

In her affidavit the Applicant stated in para.2, that she is presently self- employed and a resident of Kampala at Plot 1 Ekobo Avenue, Kololo.

In para.6: That she obediently, dutifully and voluntarily presented herself at the CID Headquarters to be arrested.

In Para 10: That she is a widow with three children all of whom are still of school going age, and she is the sole provider for her family.

In Para. 12: That her Counsel advised her that it is her Constitutional right to be released on bail pending her trial.

In Para. 13: That it is fair and just to release her on bail.

In Para. 14: That she has never been convicted of any criminal offence, and that she undertakes to abide by the conditions of bail.

The Applicant was represented by learned Counsel Mr. Bob Kasango. Counsel Kasango argued the application and I carefully listened to his submissions.

The application was opposed by the Respondent who filed an affidavit in reply sworn by James Penywii, the Director of Operations at the IGG.

I have carefully perused the affidavit in reply. In Para.3 it sets out a Submission of law. Para.5 also sets out a legal Submission. I have not been able to see any statement of fact constituting a ground why Court should refuse to grant bail to the Applicant. On a suitable occasion such an affidavit would be struck out for being argumentative and devoid of facts.

Learned Counsel Ms. Lillian Mwandha reiterated the provisions of the law upon which this application was based. She submitted that bail is not an automatic right. She cited the rulings which this Court has recently made in Misc. Appl. No.94/07 and Misc. Appl. No.95 of 2007 for Dr. Kamugisha and Captain Mike Mukula, respectively. Counsel reiterated that this Court granted bail to those people on the ground of advanced age, which is a requirement of a combination of S. 15 (1) (a) and (3) of the TIA.

Counsel Bob Kasango for the Applicant conceded that the Applicant is not suffering from any grave illness. He also volunteered information that the Applicant is aged 43 years. He submitted that this application is not based on any exceptional circumstances. However, Counsel cited a ruling of the Constitutional Court in Constitutional Reference No.20/05: Uganda (DPP) vs. Col.(Rtd) Dr. Kiiza Besigye.

Counsel was asked to explain the meaning of the Court's ruling especially at page 9 from line 15 up to page 10 line 14.

The Constitutional Court on its own offered to discuss a situation where the accused is charged with an offence only triable by the High Court but has not spent the statutory period of 180 days in custody before committal. The Court observed that Court may refuse to grant bail where the accused fails to show to the satisfaction of the Court exceptional circumstances under S. 15(3) of the TIA. The Court observed that the exceptional circumstances are regulatory. The Court went on to reproduce the Provisions of Sub-section (3) of S. 15 of the TIA.

The Court observed that the sole purpose of the Trial on Indictments (Amendment) Act, No.9 of 1998, and the provision for exceptional circumstances, was to operationalise Article 23 (6) ( c) for accused persons desirous of applying for release on bail before the expiry of the Constitutional time limit of 180 days.

With due respect to the Constitutional Court, I must say that their observations on that occasion were obiter dicta. The Court confessed that it had not been availed the benefit of any submissions from Counsel. The Court was not interpreting Article 23 (6) (a) of the Constitution in light of the Provisions of S. 15 (1) (a) and (2) of the TIA. The Court did not decide conclusively that the requirement for exceptional circumstances does not apply to cases of abuse of office, embezzlement, causing financial loss and so on, listed under Subsection (2) of S. 15 of the TIA which are triable by Magistrate's Courts. I am unable to use that Constitutional Reference and the Court's observation as authority for a Pronouncement which would overturn the meaning and intent of the provisions of S. 15 (1) (a) of the TIA. I can only traverse the road taken by the Constitutional Court to the extent where it said:

- i. That article 23 (6) (a) of the Constitution confers discretion upon the Court whether to grant or not to grant bail; and
- ii. That the exceptional circumstances set out in S. 15(3) of the TIA are regulatory.

In S. 15 (1) it is provided that the Court may refuse to grant bail to a person accused of Abuse of Office [see S. 15(2) (d) of the TIA] where he or she does not prove to the satisfaction of the Court that exceptional circumstances exist justifying his or her release on bail.

The Constitutional Court has observed that this requirement is regulatory. Also, the provision itself is couched in words which show that the Court has discretion in the matter. It is expressed as follows:

“\_\_\_\_\_The Court may refuse to grant bail to a person”.

The Court is supposed to consider each application for bail on its own merits. Furnishing exceptional circumstances is not the sole consideration. The Court has to consider that the applicant for bail will not abscond when released on bail, (see S. 15 (1) (b) and (4) of the TIA).

In Kenny's Outlines of Criminal Law, 19<sup>th</sup> Edition at page 586 Note 708 the learned author advised Courts in exercising the discretion to admit a

Remand prisoner to bail to consider what likelihood there is of his failing to appear for trial. The Courts were advised also to consider whether the proposed sureties are independent or are likely to be indemnified by the accused.

In the instant case I have considered the following factors:

- i. The need to give an applicant for bail the full benefit of her Constitutional rights and freedoms.
- ii. The absence of any evidence that the applicant may cause lawlessness to society if released on bail;
- iii. The status of being a widow and a single parent of school going children;
- iv. The need to de-congest prison;
- v. The act of the applicant turning herself into CID Headquarters ready to be arrested and charged;
- vi. Absence of any evidence from the Respondent that there is a risk of the Applicant absconding.
- vii. Absence of any evidence that the Applicant has any likelihood of interfering with the course of justice.
- viii. The seriousness of the offences against the Applicant;
- ix. Absence of any evidence that the Applicant is likely to commit other offences while on bail.
- x. Absence of any evidence that the Applicant is likely to interfere with the prosecution's witnesses.
- xi. The status of the Proceedings, that no incriminating evidence has been produced against the Applicant; that the trial is yet to start.
- xii. The Constitutional requirement that the Applicant should be presumed to be innocent until she is proved guilty or until she changes her plea to one of guilty.

- xiii. The caution that bail should not be refused as a form of punishment for the Applicant.
- xiv. The absence of any facts in the affidavit in reply filed by the Respondent.
- xv. The presence of sound Sureties within the jurisdiction of both this Court and the lower Court ready to undertake that the Applicant shall comply with the conditions of her bail.
- xvi. The absence of any evidence from the Respondent that investigations are still continuing, and that the Applicant may access important prosecution evidence and may cause it to disappear.

This Court has carefully considered the three Sureties presented. The Respondent did not object to any one of them. The Court considers them quite substantial, acceptable and sufficient.

The Court is satisfied that the applicant has Sureties who are responsible citizens and who can ensure that she appears for her trial in the Chief Magistrate's Court at Buganda Road. I consider this case exceptional where I should exercise this Court's discretion inherent in S.15 (1) of the TIA not to refuse to grant bail. I, therefore, hereby grant bail to the Applicant on the following conditions:

- 1) The Applicant is to enter an undertaking with the Registrar (Crime) in an amount of Shs. 10 Million (Not Cash) guaranteeing that she will attend the Chief Magistrate's Court at Buganda Road to take her trial.
- 2) Each of the three Sureties for the Applicant will also enter an undertaking 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 answer the charges against her.

- 3) The Applicant must surrender to the Registrar (Crime) her Passport.
- 4) The Applicant, after her release on bail, must report to the Registrar (Crime) twice every month: on every second Thursday and on every last Thursday of the month.
- 5) Since this Court by virtue of Article 139(1) of the Constitution and S. 14(1) of the Judicature Act has unlimited original jurisdiction in all matters, and this application has been presented inclusive of all charges to which the Applicant pleaded, 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 her case, that is 6.6.07.

Orders accordingly

Hon. Justice Moses Mukiibi

JUDGE

29<sup>TH</sup>- 5 .2007

At 4.15 pm today.

Mr. Kasango Bob - for Applicant Applicant is in Court.

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

Ngobi: Court Clerk

**Court:-** The Ruling is delivered in open Court.

**Hon.** Justice Moses Mukiibi

**JUDGE**

**29<sup>TH</sup>.5. 2007**