

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CRIMINAL MISC. APPLICATION NO. 87 OF 2012**  
(Arising from Buganda Rd Court Crim. Case No. 22 of 2011)

**KINYAMBILA MUMBERE BONIFACE.....APPLICANT**  
**VERSUS**  
**UGANDA.....PROSECUTION**

**BEFORE: HON. MR. JUSTICE LAMECK N. MUKASA**

Representation:

Mr. Caleb Alaka

Mr. Martin Masereka - of Counsel for the Applicant

Mr. Fred Kakooza (PSA) for State

Court clerk

Mr. Kutosi Charles

Proceedings Recorder

Mr. Kawali Muzafalu

**RULING:**

The Applicant Mr. Kinyambila Mumbere Boniface, with seven others are the Accused persons in Criminal Case No. 22 of 2011, Buganda Road Chief Magistrate Court. They were charged on 27<sup>th</sup> June 2011, and remanded at

Luzira Upper Prison. The Applicant is charged with treason contrary to Section 23(1) (c) and (d) of the Penal Code Act. This is the Applicant's third application for bail. His first application was Vide Misc. Appl No. 43 of 2011 jointly with Matte Simon Mwesige. The Application was before me and rejected on 27<sup>th</sup> September, 2011 for reasons, inter alia; of the seriousness of the offence charged and period the applicants had been on remand then. The second application was Vide Misc. App. No. 9 of 2012 before Hon. Justice Rugadya Atwoki, it was jointly with Muhwezi Esau and Matte Simon. It was on 29<sup>th</sup> February 2012 rejected on the ground that the Applicants had been committed to the High Court in January 2012.

The Applicant now makes this 3<sup>rd</sup> Application on grounds, inter alia, that:-

1. Courts always take long to hear charges of treason.
2. The Applicant has a fixed place of abode within the jurisdiction of this Honorable Court.
3. The State has completed the investigations in this matter.
4. The Applicant is a first offender and has never been convicted of any criminal offence.

The Application is supported by an affidavit deposed to by the Applicant. He therein avers that he, with others were charged on 27<sup>th</sup> June 2011 and committed to the High Court on 6<sup>th</sup> January, 2012.

I have carefully studied the Lower Court proceeding. They show that six people, including the Applicant, were charged on 27<sup>th</sup> June 2011. They were

on 6<sup>th</sup> January 2012 committed to the High Court. To date they have not been tried. Article 23(6) of the Constitution (as amended) provides:

*“Where a person is arrested in respect of a Criminal offence:-*

- (a) the person is entitled to apply to the 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, if that person has been remanded in custody for One hundred eighty days before the case is committed to the High Court, that person shall be released on bail on such conditions as the Court considers reasonable.”*

Mr. Fred Kakooza, for the State, objected to the application. One of the grounds for his objection was that treason is a serious offence specified in Section 15(3) of the Trial on Indictment Act for which an applicant for bail is required to prove to the satisfaction of the court the existence of exceptional circumstances to justify his/her release on bail. He argued that the Applicant had not shown any of the exceptional circumstances set out in section 15 above.

Mr. Caleb Alaka cited Constitutional Reference No. 20 of 2005 – Uganda (DPP) vs Col. (Rtd) Dr. Besigye where it was held that exceptional circumstances under section 15(3) above are regulatory. In the same case the Constitutional Court held that under Article 23(6)(b) and (c) the court

has no discretion but an obligation to release on bail. The Court only has the discretion to determine the conditions of bail.

In the instant case the Applicant was charged on 27<sup>th</sup> June 2011. By the time he was Committed to the High Court on 6<sup>th</sup> January 2012 the Applicant had been on remand for more than 180 days. He was already entitled to the Constitutional right to bail, the only restriction being “*on such conditions as the court considers reasonable*” . In such circumstances the requirement for exceptional circumstances does not arise.

In Joseph Lusse vs Uganda (1997) III KARL 58, the applicant, just like in the instant case, had been remanded for treason for more than 360 days (before the amendment). Then the State Committed him to the High Court for trial. The Applicant after the Committal brought an application for release on bail. The State opposed the application arguing that since the applicant had been Committed for trial, he could not be released on bail. Hon. Justice Tabaro held that under Article 23(6)(c) even where he has been on remand for more that 360 days (now 180 days) such person shall be released on bail.

I agree with the above holding and I so held in Naiga Hellen vs Uganda – Crim Misc. Application No. 41 of 2012. I am further strengthened by the decision of the Constitutional Court in Constitutional Petition No. 46 of 2011 and Constitutional Reference No. 54 of 2011- Hon. Sam Kutesa & others vs AG & Uganda where it was held that bail does not automatically lapse upon committal. It would follow that an accused person whose Constitutional right to bail has accrued under the provisions of Article 23(6)

(c) of the Constitution shall not automatically cease upon Committal to the High Court.

Considering the fact that the Applicant has an inherent right to liberty, still enjoys the presumption of innocence and has a Constitutional right to bail under Article 23(6)(c) of the Constitution but balanced with the seriousness and gravity of the offence and the interest of society to be protected from lawlessness and the national security the Applicant is released on bail on the following terms:-

1. The applicant is to execute a CASH bond of shs 5,000,000/- (five million shillings only).
2. The following sureties presented by the Applicants are approved:
  - i) Bahati Sam
  - ii) Munihira Daniel, and
  - iii) Thembo Sibanza

Each is to execute a bond in the sum of shs 5,000,000/- (five million shillings) NOT CASH.

3. The Applicant is to deposit his Passport No. B 0808079 with the Deputy Registrar Criminal Division.
4. The Applicant is to report to the Deputy Registrar Criminal Division on every 4<sup>th</sup> day of the Calendar month with effect from 4<sup>th</sup> March, 2013.

**LAMECK N. MUKSA**

**JUDGE**

**4/02/2013**