

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL MISCELLANEOUS APPLICATION NO. 13 OF 2013

SENTONGO STANLEY & 4 OTHERSAPPLICANTS

VERSUS

UGANDARESPONDENT

RULING

On 20th August 2012 Messrs Stanley Sentongo, Edrisa Senjobe Serunga, Enock Kaggwa, Robert Wasswa and Athaenathio Mujabi were arrested and subsequently charged with the offence of murder contrary to sections 188 and 189 of the Penal Code Act. They were remanded to Nakasongola prison and, to date, have not been committed to the High Court for trial. All 5 accused persons have since filed this application for bail pending trial. The application is supported by affidavits deposed by all the applicants. At the hearing of the application, Mr. Moses Ingura appeared for the applicants, while Ms. Adrine Asingwire represented the respondent.

The crux of Mr. Ingura's argument was that all 5 applicants had been on remand for 180 days and were therefore entitled to be released on bail, the only subsisting issue before this court being the conditions that would pertain to the grant of bail. Counsel presented 2 sureties for each applicant and argued that each applicant was

a responsible citizen with a fixed place of abode, family commitments and sizeable business/ commercial interests and, therefore, should be granted lenient bail terms. He cited the cases of **Uganda vs Kiiza Besigye Const. Ref. No. 20 of 2005** and **Godi H. Akbar vs Uganda Misc. Applic. No. 20 of 2009** to buttress his contention that bail in the present circumstances was mandatory and the only discretion this court had was with regard to the terms thereof.

Ms. Asingwire, on the other hand, contended that though the applicants were entitled to be released on bail, stringent terms should be attached to such grant of bail given that the credibility of the sureties presented was, in her opinion, questionable.

Article 23(6)(c) of the Constitution (as amended) provides as follows on bail:

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

(a)...

(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 and 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.”

Section 14(1) of the Trial on Indictment Act (TIA), Cap. 23 mandates the High Court to release an accused person on bail **‘on taking from him or her a recognizance consisting of a bond, with or without sureties, for such amount as is reasonable in the circumstances of the case, to appear before the court on such date and at such time as is named in the bond.’**

Section 17 of the TIA, in turn, provides:

“If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the High Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him or her to find sufficient sureties, and on his or her failure so to do may commit him or her to prison.”

The foregoing legal provisions have the following sum effect. First, article 23(6) (c) of the Constitution renders it mandatory for the High Court to grant bail to any person remanded in custody for 180 days without committal for trial. Secondly, section 14(1) of the TIA outlines the essence of what amounts to bail, to wit, a bond on an applicant for such amount of money as would be reasonable to ensure such applicant’s attendance of court on the dates designated in the bond. While section 14(1) permits the grant of bail by the High Court with or without sureties, section 17 of the same Act is quite instructive on the need, not only for sureties but for substantial or sufficient sureties. Therefore, in my view, even where the grant of bail is mandatory, as is the case presently, in exercise of its discretion on the terms of such grant the court is required to evaluate the substantiality of the sureties presented and may decline to immediately grant bail until more substantial sureties are presented. Indeed, an applicant otherwise entitled to mandatory grant of bail is, nonetheless, required to meet the terms of such bail as set by the courts.

What would amount to a substantial or sufficient surety is quite relative, and would of necessity depend on the circumstances of each case. Nonetheless, in **Odoki, B. J, ‘A guide to Criminal Procedure in Uganda’, LDC Publishers, 2006 (3rd Edition) at p.91** it was opined:

“The court should inquire into the worth and social position of sureties. The sureties must have the means to answer for the sum involved (recognizance) and should be persons of some social standing in the community.”

I do take the foregoing parameters into account as I evaluate the substantiality of the sureties provided. Further, in my view, the over-riding consideration in an application such as the present one is that the terms of bail granted should be such as would ensure the grantee’s compliance with the bond reporting terms as is implicit in section 14(1) of the TIA, as well as his/ her appearance for the substantive trial. The considerations stipulated in section 15(4) of the TIA would be instructive for the latter purpose.

The circumstances of the present application are that the applicants and 3 others were charged with murder, a grave offence by any standard. The applicants were all stated to be persons of means, all of whom were successful commercial farmers with commercial premises in Nakasongola Town. The sureties presented were all of a fairly substantial social standing in their community and successful farmers or business persons able to make good of the recognizance set by this court if the need arose. I would therefore accept all the sureties presented. Furthermore, I am satisfied that the relationship between each applicant and their sureties is such as would ensure the applicants’ appearance for their trial.

Bail is therefore granted on the following terms:

1. A1 and A4 shall each execute a cash bond of Ushs. 1,500,000/=; while A2, A3 and A5 shall each execute a cash bond of Ushs. 2,000,000/=.

2. Each of the sureties shall execute non-cash bonds of Ushs. 6,000,000/=.
3. The applicants shall each report to the Deputy Registrar of the Criminal Division of the High Court every two weeks at 10.00 am starting on Monday 11th March 2013 until the disposal of their case.
4. Failure of the applicants to fulfill these bail terms shall result in the forfeiture and/ or cancellation thereof.

I so order.

Monica K. Mugenyi

JUDGE

25th February, 2013