

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CR-CM-0082-2011  
(Arising from Criminal Case No.49/2011)**

**MUSENE PETER.....APPLICANT  
VERSUS  
UGANDA.....RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

The applicant through his **counsel Magirigi**, applied to this court for release on bail under sections 14 and 13 of the TIA. Counsel referred court to the Notice of Motion filed, supported by the affidavit of the applicant. The applicant’s counsel grounded his application on the fact that accused respected the police bond and never absconded, accused has been on remand since 1<sup>st</sup> December 2011, and that accused is 62 years. He presented 2 sureties whom court dully examined.

The State Attorney for the State opposed this application. She argued that exceptional circumstances were not proved as required under section 14(TIA).

The State urged that it was to provide an expeditious trial and that, there was no proof by accused of his advanced age. She argued that the affidavit under paragraph ‘8’ and ‘9’ did not give any justifiable reasons for grant of bail. In cross reply counsel maintained his prayers.

This application is premised on the provisions of sections 13 and 14 TID. The section (13) empower court to issue production warrant to have accused brought before it and section (14) (1) empowers the High Court to release on bail conditionally or unconditionally.

The accused has stated that he has been in custody since he was remanded in 2011. He claims to be of advanced age of 62 years. (See his affidavit). The provisions of Article 23(6) (c) of the Constitution of Uganda are that for offences triable by the High Court, the person shall be released on bail if the person has been in custody for 180 days before the case is committed to the High Court.

In my view arguments for exceptional circumstances only come into play after satisfaction that the above provision is respected. I find that the record shows that accused was remanded on 1<sup>st</sup> December 2011 as per lower court record. Since then, State has neither tried him nor committed him for trial. This totals to more than 180 days on remand without trial. The law is that upon clocking 180 days without trial or committal, then the accused person is entitled to an automatic release on bail.

Section 15(3) (c) of the TIA, defines exceptional circumstances to include “old age”. Though applicant merely mentions this age, without proving it by any express documentary or other method, I am inclined to grant him the benefit of doubt, and find that he also qualifies for consideration under the above provision of the law.

In the result, this application is allowed for reasons stated above. The accused/applicant will be granted/released on bail on the following conditions.

The accused person shall execute a non cash bond of shs.1,000,000/= (one million). Each of the sureties will also execute a bond of shs.1,000,000/= (One million) not cash. Accused and sureties to appear before the Registry to sign bond forms, and after, to continue so to attend for case mention until advised otherwise by the said Registrar.

Report to LC.I Chairman and OC CID weekly.

**Henry I. Kawesa**

**JUDGE**

**02.10.2013**