

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

**HCT-04-CR-CM-0009-2013
(Arising from HCT-04-CR-SC-0102-2013)**

**MUTEMELE HUDSON.....APPLICANT
VERSUS
UGANDA.....RESPONDENT**

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

RULING

The applicant who is on remand and was dully committed for trial has applied for bail. The application is by Notice of Motion brought under S.14 (1) and 15 (4) of TIA. It is supported by an affidavit in which the applicant states the grounds of the application to be:

- (i) He has a constitutional right to bail.
- (ii) The offence isailable.
- (iii) That he has substantial sureties.
- (iv) That he has a fixed place of abode within court's jurisdiction.
- (v) That applicant is a school student and would like to continue with his education.

In court the application was presented for the applicant by **Byamgaba** from Justice Centres Uganda. Counsel went through the law as contained in Article 23(6) (c) of the Constitution to emphasize that the constitutional right to bail overrides all other consideration. He referred to the case of ***Uganda v. Colonel Kiiza Besigye*** to emphasize the above point. He referred to ***Hon. Sam Kutesa & Ors v. A.G***, which held that bail does not automatically lapse upon committal. He presented four sureties to court.

The State objected to the application. Referring to paragraph 4 of applicant's affidavit she stated that accused is committed and due for trial as soon as possible. She informed court that the coming session in Mbale would handle his case; among others.

She also referred court to the case of ***Kamoga v. Uganda (1992-1993 HCB) Pg 57*** where it was observed that infancy and schooling were not tenable legally as they did not fall under the definition of section 14 (a) of the TIA.

The provisions of section 14 (1) and 15 (4) of the TIA under which this application is made states as herebelow:

14(1). *“The High Court may at any stage in the proceedings release the accused person on bail....”*

15 (1) “ Notwithstanding section 14, the court may refuse to grant bail to the accused of an offence in subsection (2) if he does not prove to the satisfaction of court of that;

(a) exceptional circumstances exist justifying his or her release on bail, and

(b) that he/she will not abscond when released on bail.”

Article 23(6) (c) “..... the person shall be released on bail if the person has been remanded in custody for one hundred and eighty days before the case is committed to the High Court.”

I will immediately distinguish this case/application from those that are being referred to in Article 23(6) (b) and (c). These Constitutional provisions protect those people detained in custody continuously for the stated remand periods without being tried of the offence in court if the case is triable by both High Court and subordinate court. The accused is charged of murder so the provision above does not apply to him.

26 (6) (c) applies to accused persons who are remanded continuously for a period of one hundred eighty days without being committed to the High Court for trial.

In this case, the accused was committed for trial on the 10th of May 2013 and there is a session commencing soon. This therefore does not apply to him either.

Bail can only be considered for this accused therefore under the provisions of sections 14 and 15 of the TIA. The provisions above in section 15 provide that court may refuse to grant bail if condition (a) and (b) are not satisfied.

Regarding section 15(1) (b), the accused presented substantial sureties showing that he has a place of abode. However 15 (1) (a) requires accused to prove exceptional circumstances.

According to 15(3) (3) (a) exceptional circumstances mean.

(a)grave illness certified by a medical officer of the prison or other institution or place where accused is detained as being incapable of adequate medical treatment while accused is in custody.

(b) Certificate of no objection from DPP.

(c)Infancy or advanced age of accused.

None of the above has been pleaded or proved by applicant. The fact of being a student, has been challenged by State Attorney as being outside the known parameters of exception in these matters. I agree.

The applicant has therefore failed to satisfactorily prove to this court that exceptional circumstances do exist to warrant his release on bail. The application for bail is for the above reasons not granted. The application is accordingly rejected.

Henry I. Kawesa
JUDGE
02.10.2013