

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

**HCT-04-CR-CM-0033-2012
(Arising from Criminal Case No.32/2012)**

**OPIO ABUNYA ANTHONY.....APPLICANT
VERSUS
UGANDA.....RESPONDENT**

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

RULING

Applicant applied for release on bail through his counsel **Oburu Lawrence**. The Notice of Motion and supporting affidavit are on record and show that: Applicant was arrested and charged in Pallisa Court and later remanded to Kamuge Prison on 11th October 2012. It was also pleaded that applicant suffers from grave illness incapable of being treated in Prison. The applicant indicated through counsel that he has a fixed place of abode and has substantial sureties.

Counsel referred court to section 15 (3) (a) TIA; and Article 23(6) (c) of the Constitution arguing that there are exceptional circumstances and that the Constitution also entitles accused to an automatic grant of bail since he has been in custody for over 180 days; without trial.

Justine Resident State Attorney for the State opposed the application on grounds that no exceptional circumstances were proved. She faulted all annexures to the affidavit and invited court to find them to be of no evidential value, for reasons she stated in her submissions. She had no objection to the sureties.

The provisions of section 14 TID grants this court jurisdiction to grant bail on conditions it deems fit. However section 15, (1) places exceptions and provides for exceptional circumstances. However, Article 23(6) (c) of the Constitution provides i.e. for cases triable only by the High Court, the person shall be released on bail if that person has been in custody for the period of 180 days without committal to the High Court.

The beginning point is the constitutional provision which is the master of all our laws. Does this accused fall within the category of persons who are being protected under Article 23(6) (c) above?

The lower court record shows that he was charged in court on 11th October 2012, and remanded that same day to prison. He has been on remand since then. The trial has never commenced. No committal proceedings are on record. This means that the accused has been on remand for over 180 days, without trial. He is protected by the above constitutional provision.

Secondly, it was urged for appellant that he proved the existence of exceptional circumstances.

The State vehemently opposed this. I agree with observations made by Resident State Attorney that the documents presented to court in support of the application leave a lot to be desired. They are not authentic, some are photocopied and not certified Anex 'A' letter of OC Kamuge A/C III, is not on Headed paper, (The same is true for Anex 'A'- Pallisa Hospital letter of Dr. Angira; and Anex 'B'- Uganda Prison letter).

Cases of bail application under section 14 and 15 (1) (a) need proof of exceptional circumstances. This proof must conform to the known proof/principles under the laws of evidence. The standard exhibited in this current case, cannot pass the evidential requirement for such proof by documentary evidence.

However, since court has already found that the accused is protected by Article 23(6) (c) of the Constitution I waive the requirements of the provisions of sections 13, 14, 15 of TID, and find that this accused person has stayed on remand without committal/trial for over 180 days, contrary to the constitutional requirements. His application for bail is accordingly granted. The application is allowed, on the following conditions. Given the circumstances,

1. Accused shall execute a cash bail deposit of shs.200,000/= (Two hundred thousands only).
2. Each of the sureties shall execute a non cash bond of shs.5,000,000/= (five millions) only.
3. Accused must continue to report to OC CID Pallisa weekly and to report himself to the local area (LC.I) Chairman weekly at Omatakojo village, Kibale Pallisa, and submit himself every end of month to the Registrar High Court with evidence of such reporting at LC.
4. Accused will continue reporting himself for mention at court before the Registrar until otherwise advised for bail extensions.

I so order.

Henry I. Kawesa

JUDGE

02.10.2013