

## THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI

HCT-12-CR-CM-0007-2013

## **RULING**

I have considered the grounds of this application, the supporting affidavit and the submissions of counsel for both sides.

It is now settled that the grant of bail is a matter within the discretionary powers of court. The cardinal principle is the presumption of innocence which is enshrined in our constitution. While considering bail the court is required to balance the constitutional rights of the applicant and the need for that person to attend trial. Bail should not be denied as a form of punishment or on account of unsubstantiated allegations as to his perceived conduct while on bail.

In similar vein, court has to consider the gravity of the offence and the possible penalty it attracts upon conviction. The court has to be satisfied that the applicant will appear for trial and will not abscond.

In the instant matter, the applicant is charged with aggravated defilement contrary to section 129 (3) and (4) (C) of the Penal Code Act. The maximum penalty for such an offence is death. At the time of writing this ruling the applicant had just

been committed for trial. According to the summary of the case, the applicant is alleged to be the maternal uncle to Sumaya Katwesige, the alleged victim in the main case. They are also said to be neighbours at Kijura South, Central Division, Masindi Municipality. The alleged relationship would therefore suggest the applicant exercises or has some degree of control or authority over the victim. While there is no explicit evidence that he will interfere with the victim if released on bail, the likelihood of such an occurrence is given more by the alleged relationship and the proximity of their homes.

In the exercise of court's discretion in the matter, I am of the view that the interests of justice in the main case are better served by declining to grant bail to the applicant other than granting it at this juncture. I should perhaps observe, since the applicant has been committed for trial and the offence is alleged to have been committed at Kijura, which is stone's throw from court, and the key witness (victim) is said to reside in the same area, there is nothing to stop the main case from being heard. The concerns of their party can best be addressed by embarking on the said process.

Application for bail is disallowed and it is ordered the main case be fixed for hearing. Hearing of the main case is fixed for 6<sup>th</sup> November 2013 at 9:30 Am.

SIGNED

BYABAKAMA MUGENYI SIMON

RESIDENT JUDGE

23<sup>RD</sup> OCTOBER 2013