



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
HCT-12-CR-CM- 0009-2013**

OCHAYA RICHARD ::
APPLICANT

VERSUS

UGANDA ::
RESPONDENT

RULING

I have carefully studied the grounds of this application and the arguments of counsel for either sides and against the application.

Bail is a constitutional right and an accused is presumed innocent until proved guilty or until he/she pleads guilty to the charge. The underlying factor in an application for bail is the requirement to strike a balance between the presumption of innocence and the need to have an accused/applicant turn up for trial. The power to grant or not grant bail is entirely within the discretion of court, which discretion ought to be exercised judicially.

In the exercise of the said discretion, court is required to consider the seriousness of the offence and the punishment it attracts upon conviction. Other factors include the antecedents of the

applicant in so far as they can be established, whether he has a fixed place of abode, the likelihood of absconding and the possibility of interfering with witnesses.

In the present application, the applicant is charged with 17 counts of kidnapping with intent to murder contrary to section 243 (1) (a) of the Penal Code Act. The maximum penalty for this kind of offence on conviction is death. Without any doubt the applicant faces grave charges. He has presented two sureties whose suitability has not been put into doubt by the respondent. There is however one serious flaw in the applicant's quest for release on bail.

In the determination whether or not the applicant is likely to abscond and not turn up for trial is the question, whether he has a fixed place of abode within the jurisdiction of this court. Ground 3 of the application states that he is an employee of Uganda wildlife authority and has a fixed place of abode within the jurisdiction of this Honourable Court. This is partly reiterated in paragraph 5 of the applicant's affidavit in support. The said documents are however very silent on the precise location of the said fixed place of abode. The applicant was expected to state the Village, Parish, Sub-county, county and district of his stated fixed place of abode. As rightly argued by Ms. Bigabwa Anna for the respondent, one's place of employment is not his/her fixed place of abode.

To state the obvious, one may be employed in Uganda while having a fixed place of abode in any of the countries of the world. Furthermore, it is not enough to merely state one has a fixed place of abode within the court's jurisdiction without giving specifics thereof.

In that regard the applicant has not proved to the satisfaction of court that he has a fixed place of abode within the jurisdiction of court. In my view, it would be improper to grant bail to someone who cannot be located in any village or place in Uganda. For that matter this application fails and the same is accordingly disallowed.

SIGNED

BYABAKAMA MUGENYI SIMON

RESIDENT JUDGE

23RD OCTOBER 2013