

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT GULU
HCT - 02 - CR - CM- 0032 - 2014
(ARISING FROM CRIMINAL CASE NO. AA - 059 - 2012)

KOMAKECH GEOFFREY:.....:APPLICANT

VERSUS

UGANDA :.....:RESPONDEN

T

BEFORE: HER LORDSHIP, LADY JUSTICE MARGARET MUTONYI

R U L I N G

This ruling is in respect of an application for bail pending the hearing and determination of Criminal Case No. AA- 059/2012 Pending before this court against Komakech Geoffrey hereinafter referred to as the Applicant.

The application is brought by way of Notice of Motion under Article 23(6)(b) of the Constitution of the Republic of Uganda as amended and section 14(1), 15(1)(a), (4)(a),(b),(c),(d) of the Trial Indictment Act Cap.23 Laws of Uganda.

It is supported by the affidavit of the Applicant dated 1st April 2014.

The background to the application is that the applicant has been committed for trial on an indictment for aggravated defilement.

The grounds upon which this application is premised are stated briefly in the Notice of Motion and laid out in detail in the applicants' affidavit in support of his application. He averred among other things as follows:

That he was arrested from Palenga, Omoro in Gulu District in the year 2012 and charged with aggravated defilement. That he has spent over six months in prison and although committed, the date of his trial is not known.

That he has a fixed place of abode in Palenga, in Omoro County in Gulu District within the Court jurisdiction to ensure his return to answer the charge against him.

That he has substantial sureties within the jurisdiction of this court.

That he is a father with parental responsibilities and sole bread winner in the family and his continued stay in prison is having an impact on the studies of his children.

He also averred that he is HIV positive and conditions in prison here worsened his health.

And that he has been informed by his counsel that he has a constitutional Right to apply for bail and this court can exercise its discretion and grant no bail.

Lastly he averred that it would be in the interest of justice if this Honorable Court was to release him on bail since he is presumed innocent unless proved otherwise.

Counsel Geoffrey Akena for the applicant submitted on behalf of his client reiterating the grounds for the application. He presented two sureties for the applicant:

Lakwo Peter a peasant farmer and Boniface Ojok who claimed to work with the Electoral Commission but had no identification to that effect. He however had Ugandan Passport No. B0442368.

Both sureties are residents of Palenga, Omoro Sub County in Gulu where the applicant hails from: Counsel's submission is on record and his rejoinder.

The learned Resident State Attorney Mr. Omia Patrick opposed the application. He submitted that the application is wrongly brought under the provision of Article 23(6) (b) of the Constitution since the provision applies to cases liable by both the High Court as well as subordinate courts. That the offence of aggravated defilement is triable and by the High Court making the provision irrelevant in the circumstances.

He further submitted that it is trite now that while an accused has a Right to apply for bail, where he is already committed like in the instant case, this court has the discretion to grant it.

He quoted the famous case of **Uganda Vs. Col. Rtd. Dr. Kizza Besigye**, Constitutional Reference No. 20 of 2008; where it was held that “ *where an accused is charged with an offence triable only by the High Court but has not spent the statutory period of 180 days in custody before committal, the court may refuse to grant bail where the accused fails to show to the satisfaction of the court exceptional circumstances under S.15(3) of the Trial on Indictment Act.*”

The court outlined certain factors that ought to be taken into account which among others included the gravity of the offence, statics of the offence and stage of the proceedings, the likelihood of the accused/applicant offending while on bail, the risk of the accused absconding or interfering in the cause of Justice”

The rest of his submissions are on record. He also filed an affidavit deponed by No. 42314 D/Corporal Menya Edmon.

He stated under paragraph 7 of his affidavit that, true the sureties are residents of the applicant’s village but first surety is a notorious drunkard, and that the accused admitted in his charge and caution statement that he defiled the victim.

In rejoinder, caused for the applicant submitted that it is no longer a mandatory requirement of the law that an applicant has to prove to court exceptional circumstances before he is released on bail in all cases triable by the High Court. It still remains the Discretion of court.

I now turn to the main issue before court as to whether or not the applicant should be granted bail pending the hearing and

determination of his case. The courts jurisdiction in this matter is not disputed. The court has jurisdiction to entertain the bail application by the applicant who has been committed for trial.

It is also not in doubt that the applicant has a Constitutional Right to apply for bail. Pending the hearing and determination of the case against him.

In the case of **Uganda vs Col. Rtd. Dr. Kizza Besigye** (Supra) the position of the court was that whereas applying for bail is a Right which is of cause Constitutional, grant of bail remains discretionary.

The discretion of court has to be exercised judiciously to meet ends of justice.

There is no doubt, the accused/applicant is presumed innocent until proven guilty. He is however committed for trial over a serious charge. One of the factors that ought to be taken into account in the Col. Rtd. Dr. Kizza Besigye's case was the likelihood of the applicant offending while on bail and interfering in the cause of justice.

The applicant has confessed he is HIV positive but he is not suffering from AIDS. He is still sexually active and there is no way this court can impose a condition which will curtain him from offending while on bail. Much as he is still presumed innocent by this court, the allegation against him is that he had a relationship with the victim who got pregnant. This court is also not in position to impose a condition that will prevent him from accessing the victim who is now an adult which may interfere with the cause of justice.

I also wish to comment on the sureties. The 1st surety is said to be a peasant while the second did not prove he was working with the Electoral Commission. Considering the nature of the offence the applicant is accused of, which is grave, court has not found the two sureties substantial.

This court appreciates the fact that prison condition is not the best, but the applicant has not proved to court that he is not ask to access ARV's or that his condition/health has worsened while in prison. There was no medical report to that effect.

The applicant is assured by this court that he has not lost his right to the presumption of innocence in anyway, but considering the circumstances of this case, the application for bail is not allowed.

The applicant is to remain on Remand as he wants his trial and Registrar directed to cause list his case at the convenient criminal session.

.....
Lady Justice Margaret Mutonyi
Judge
20/6/2014

Ruling delivered in the presence of Juliet Opoka holding brief for Counsel AKena Geoffrey for the applicant and Omia Patrick Resident State Attorney.

Anna for clerk.

.....

Lady Justice Margaret Mutonyi
Judge
20/6/2014