

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT NAKAWA  
MISCELLANEOUS APPLICATION No. 84 of 2014  
(Arising from High Court Criminal Case No. 0028 of 2012)**

**MULONGO NAMUBIRU FLORENCE::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**UGANDA::**

**RESPONDENT**

**BEFORE: HON. LADY JUSTICE ELIZABETH IBANDA NAHANYA**

**RULING**

This Application was brought by Notice of Motion under Article 23 (6) (a) of the 1995 Constitution of the Republic of Uganda, Sections 14 and 16 of the Trial on Indictment Act, Cap 23 and Section 17(2) of the Judicature Act. It is for Orders that the Applicant be unconditionally released on bail pending the disposal of the Criminal case against him.

The grounds in support of the Application are that the Applicant has been in prison without trial since May 2012, and it is now a period of over two (2) years. That the Applicant has a Constitutional right to apply for bail. That this Honourable Court has inherent powers to release the Applicant on bail on taking from her recognizance consisting of a bond with or without sureties. That Applicant has sureties who are ready to stand for her and have indeed undertaken to abide by all the conditions that may be set by Court. The Applicant has a fixed place of abode at Kiwafu Central, Entebbe Town Council, Wakiso District, within the jurisdiction of this Court and that the Application is brought in the interest of justice. In support of this Application, the Applicant deposed an Affidavit in which he substantiated the grounds set out in the Application.

The Applicant was represented by Counsel Francis Ogwado of F.X. Ogwado & Co. Advocates whereas the Respondent was represented by Ms. Kwezi Asiimwe, State Attorney, Nakawa. They both made oral submissions.

In his submissions, Counsel for the Applicant reiterated the grounds set out in the Notice of Motion and Affidavit in support. Learned Counsel observed that the Applicant has been on remand for over 2 years. That she also has a 1 year and 9 months i.e. 21 months baby who stays with her in prison. He prayed that if Court is to impose conditions, they should be lenient.

In Reply, the State Attorney objected to the Application on the grounds that the Applicant has only been on remand for a period of 1 year and 4 months and therefore, her case qualifies as a new case. Ms. Kwezi further submitted that Prosecution should be given a chance to hold a trial. Furthermore, that the Applicant did not adduce any exceptional circumstances to warrant her release on bail and that in any case if Court be pleased to release the Applicant on bail, it should impose such stringent conditions which require stringent monitoring, UGX 2, 000, 000/= and more stringent amount for the Sureties.

Therefore, from the above, the important issue for determination is whether in the circumstances, the Applicant be released on bail.

It should be noted that the Applicant is charged with a grave offence of Murder contrary to Section 188 and 189 of the Penal Code Act. Nonetheless, the basic principle for release of an Accused person on bail is the presumption of innocence as enshrined under Article 28(3) (a) Constitution of the Republic of Uganda.

The Applicant has been in detention for over a period of 2 years. She was committed to this Court for trial on 15/08/2013. But even then, no trial has

been held in that regard. I take cognizance of the fact that applying for Bail is a Constitutional Right. See **Article 23 (6) (a)** Constitution of the Republic of Uganda. It provides; *where a person is arrested in respect of a Criminal Offence, he is entitled to apply to the Court to be released on bail and Court may grant that person bail on such conditions as Court considers reasonable*. Furthermore, under Section 14 of the T.I.A, provides Court with the discretion to release an Accused person on bail upon such conditions. Section 15 T.I.A lays down the considerations for the grant of bail by Court.

Under S. 15(2) Court may refuse to grant bail if the Applicant fails to prove to its satisfaction *that exceptional circumstances exist justifying his release his release on bail; and (b) that he or she will not abscond when released on bail*.

In accordance with the facts, the Applicant herein did not rely upon any exceptional circumstances to warrant her release on bail. Ms. Kwezi's submissions in that regard were that this Court should exercise its discretion by denying the Applicant bail since she failed to adduce any exceptional circumstances. However, with due respect, this requirement is not mandatory. Court still reserves the discretion to release an Accused person on bail provided that it is satisfied that the Applicant will abide by the bail conditions that she will not abscond and will appear whenever required to answer the charges against her.

I have also taken notice of the fact that the Applicant has a fixed place of abode in Kiwafu Central Zone Entebbe Municipality, Wakiso District which is well within the jurisdiction of this Honourable Court. Furthermore, the Applicant has no other pending charges against her. The Applicant also adduced sureties who in the opinion of this Court are substantive. Surety No.1 Sebunya Daniel Kabuye, 46 years, a resident of Entebbe Kiwafu. He stated that the Applicant is his sister in law and that he has known her since childhood. The Surety is a Customs Agent at Frontline Freighters

where he has served since 2002. The Surety produced Passport No. B0956543 issued on 4/7/2012 and an Introduction letter from Kiwafu East LC.1 signed by the Chairperson LC.1 dated 1<sup>st</sup> December 2014.

Surety No. 2 introduced himself as Herbert Lugya aged 55 years, a resident of Kiwafu Ward, Division B, Entebbe Municipality, Wakiso District. The Surety is a Land Officer and they are family friends with the Applicant. He adduced an introduction letter from the L.C.1 dated 1<sup>st</sup> December 2014 and a Work Card issued by the Area Land Committee, Entebbe. Both Sureties that is Surety No. 1 (Sebunya Daniel Kabuye) and Surety No. 2 (Herbert Lugye) understood their duties, the gist of which was that they do under take to ensure that the Applicant abides by the bail conditions and she reports to Court whenever required. They also did appreciate the repercussions of standing Surety for the Applicant. Therefore, they are people suited for the purpose.

I take note that whereas the Applicant herein has not proved Exceptional Circumstances, which I noted earlier are not mandatory per Section 15 T.I.A see **Foundation for Human Rights Initiatives vs. Attorney General** (*supra*) the Applicant has proved that she is unlikely to abscond if released since she has a permanent place of abode and substantial Sureties. The circumstances of this Court require that the Applicant be granted bail. I have also put into consideration the period spent by the Applicant on remand

On these premises, and in view of what I have outlined herein, I grant this Application.

Finally, I make the following Orders;

1. That the Applicant be released on bail by taking from her a recognizance consisting of a CASH bond of **UGX. 500,000/=** (Uganda shillings Five Hundred Thousand only).
2. That the Applicant shall report in person to the Deputy Registrar High Court Nakawa Central Circuit every fortnight commencing on 18<sup>th</sup>

December 2014 at 10:00AM till disposal of the case or till directed otherwise.

3. Each of the following Sureties:-

a) Sebunya Daniel Kabuye

b) Herbert Lugya

(i) Shall deposit a pair of passport size photographs with the Nakawa High Court Circuit, & DPP Nakawa.

(ii) Shall sign a non-cash bond of **UGX.10,000,000/=** (Ten Million Uganda Shillings only).

4. A pair of passport size photographs to be deposited in Court and to the DPP.

5. The Applicant and each of the Sureties shall file a map of their respective homes and directions thereto.

6. In default by the Applicant/Accused this Court will issue a Warrant of Arrest to return the Applicant to Prison.

**Signed:.....**

**HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA.**

**J U D G E**

**04<sup>th</sup> December, 2014**