

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA - NAKAWA CIRCUIT
CRIMINAL MISC. APPL. NO. 156/2014

MUSAZI JOSEPH ::
APPLICANT

V E R S U S

UGANDA ::
RESPONDENT

BEFORE: HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA

RULING

The Applicant has applied to this Honourable Court for orders to be released on bail pending trial. The Applicant was charged with the Offence of Aggravated Robbery contrary to sections 235 & 286 (1) (b) of the Penal Code Act Cap 120. The particulars of the offence are that Kato Emmanuel, Ssemuntu Enock and Musazi Joseph alias Bukenya on the 15th Day of September 2014, at Nakabugo village, Wakiso Sub-County in the Wakiso District robbed one Kato Christopher of cash amounting to One Hundred Fifty Thousand Shillings (Ushs 150,000/=), Motor Vehicle Registration No. UAT 820C Toyota Noah white in colour valued at seventeen million shillings (17,000,000/=) and, at immediately before or immediately after the time of the said robbery, threatened to use a deadly weapon, to wit, a gun, on the said Kato Christopher.

This Application is by way of Notice of Motion under Article 23 (6) (a) and 23 (3) of the Constitution of the Republic of Uganda, sections 14 (1) and 15 of the Trial on Indictments Act Cap.23 and rules 2 and 4 of the Judicature (Criminal Procedure) (Application) Rules S.I 13-8. The Application is supported by the Applicant's own affidavit. The main grounds for the application as set in the Notice of Motion are that the

Applicant has been in police custody since 16th September 2014 and on remand since 21st November 2014, and he is not certain when his trial will begin. The Applicant is also the sole bread winner of his family. Furthermore, that the Applicant has a fixed place of abode, at Nakuwade Wakiso Sub-County, Wakiso District with sound sureties within the jurisdiction of the Court. That the Applicant has no criminal record and neither does he have any other charges pending against him. In his Affidavit in support of the Application, the Applicant also points out that he has been detained at various Police stations including Nakuwade, Kawempe and Wakiso for more than 30 days without being brought to Court or released on Police Bond.

At the hearing the Applicant was represented by the Learned Counsel Christopher Bumpejje of Mbabazi & Co. Advocates meanwhile the Respondent was represented by the Learned State Attorney Kwezi Asiimwe. The Learned Counsel submitted that the Applicant is the sole bread winner of his family of a wife, four children and two dependent relatives and his incarceration has affected the family. Counsel for the Applicant presented two Sureties. The first one was Kibira Tonny Micheal aged 37 years, male residing at Nakuwadde village, Bulenga Sub-County, Wakiso District. He is a builder at Nakuwadde. This surety told the Court that the Applicant is his maternal uncle. He presented an L.C I letter of Nakuwadde, Lubanyi dated 9th April 2015; a Resident ID 06032 issued on 4th March 2013 and expiring on 4th March 2016; Passport No. B1025018 issued on 26th April 2013 and expiring on 26th April 2023; and National ID No. 003440782 expiring on 4th January 2025. Prosecution did not object to this surety. The second surety was Teopisto Lwanga Ssalongo, aged 82 years, male residing at Kibale village, Kinoni sub-county, Lwengo District. He is a farmer and the Applicant is his nephew. He presented an L.C I letter of Kibaale LCI dated 8th April 2015, Voter's Card No. 09530856 issued on 24th June 2004. Mr. Lwanga told the Court that he has known the Applicant since he was born. Further that he is the clan head and takes care of the Applicant's children and mother.

In her submissions in reply, the Learned State Attorney, Ms. Asiimwe objected to the second surety, Mr. Lwanga, on grounds of age. She submitted that the surety stays in Lwengo, while the Applicant stays in Nakuwadde, Wakiso, and yet it might need compulsion for the Applicant to report to Court. I agreed with the Prosecution submissions and disqualified this surety because he was elderly and had a disability. I did not agree with Counsel for the Applicant that the surety is energetic and would be able to supervise the Applicant.

The Applicant presented another surety, Margaret Nalusiba, aged 50 years, of residing at Kibaale village, Kinoni Sub-County, Lwengo District. The surety is the biological mother of the Applicant. She presented an L.C I letter of Kibaale L.C I village dated 8th April 2015 and a Voter's Card No. 09530947 issued on 24th June 2004. Ms. Asiimwe also objected to this surety on grounds that she has not visited the Applicant since he was incarcerated, does not know other family members and resides outside the Court's jurisdiction. She referred to ***Foundation for Human Rights Initiativ vs Attorney General Constitutional Reference NO.20 of 2006*** where it was held that the Court has to consider the fixed place of abode and substantial sureties and also has to protect the public from lawlessness. Counsel pointed out that the Applicant has one substantial surety yet ordinarily, he should have two Sureties in accordance with practice and should be asked to produce more Sureties. I agree with the submissions of Learned State Attorney that Ms. Nalusiba is not a substantial Surety and was not a very confident Surety. Additionally, she stays in Lwengo District and may not be able to supervise the Applicant who stays at Nakuwadde, Wakiso District.

Ms. Asiimwe pointed out further that the Applicant has been on remand for 5 months, has not yet exceeded the mandatory period of 6 months; and is charged with a grave offence. The learned State Attorney prayed

that the DPP be availed one more month to complete investigations and commence trial.

It is true that under Article 28(3) of the Constitution of the Republic of Uganda, every person is presumed innocent until proved guilty. This finding of guilty only comes after a trial is held. Consequently, an Accused person should not be unnecessarily kept on remand without trial. In well deserving cases the Accused should indeed be granted bail if he fulfils the conditions attached thereto. An Applicant should not be incarcerated if he has a fixed place of abode, he has sound sureties who undertake that he will comply with the conditions of his bail, he has not on a previous occasion, when released on bail, failed to comply with the conditions of his bail and there are no other charges pending against the suspect. In this Application, however, I am not inclined to exercise my discretion to grant bail given that there are issues with his Sureties and also considering the grave indictment of aggravated robbery.

Additionally, this Court is concerned about the need to give Prosecution ample time to investigate and commence trial as soon as possible. I have also considered the public interest and the gravity of the offence. The fact that the Applicant has been on remand for five months only, has outweighed his request to be released on bail at this stage.

In the circumstances, bail is hereby denied.

Signed.....

Hon. Lady Justice Elizabeth Ibanda Nahamya

J U D G E

17th April 2015