

**IN THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA - NAKAWA CIRCUIT
CRIMINAL MISC. 0150/2014**

MUSEDE IDDI ::

APPLICANT

V E R S U S

UGANDA ::

RESPONDENT

BEFORE: HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA

RULING

The Applicant has applied to this Court for orders to be released on bail pending trial. He was indicted for rape contrary to sections 123 and 124 of the Penal Code Act Cap. 120. It is alleged that Musede Iddi alias Taata Karim on the 17th day of September 2014 at Kireka Zone D in the Wakiso District, performed unlawful sexual intercourse with Akakunda Elizabeth without her consent. The Application is brought under Article 23 (6) of the Constitution of the Republic of Uganda (as amended), section 14 (1) of the Trial on Indictment Act Cap.23 and Rule 2 of the Judicature, (Criminal Procedure) (Applications Rules) S. I 13-8.

In an Affidavit in support of the Application and the Supplementary Affidavit, the Applicant depones that he suffers from Asthma, an illness which requires constant specialised medical attention and cannot be adequately handled by medical personnel at Luzira Prison, which is a detention facility. He refers to Annexure A, a medical report written by Dr. Andama Joseph, Medical Superintendent, attached to the Affidavit in support the Application. Further, that he has a fixed place of abode in Kireka, Kampala within the jurisdiction of the Court, has no criminal record and has substantial sureties. He also states that he is a father of six (6) children and also the sole bread winner of his family.

During the hearing of the Application, the Applicant was represented by Learned Counsel Athiang Rita whilst the Defence was represented by Kwezi Asimwe State Attorney, Nakawa High Court. Learned Counsel for the Applicant submitted that the Applicant was diagnosed with Asthma in 2000. Counsel referred to the Medical Report of the Superintendent, Murchison Bay Hospital dated February 2015. She submitted that the Applicant has repetitive Asthma, hence there are exceptional circumstances for the grant of bail.

The Applicant brought two (2) Sureties; the first Surety, Asuman Weyune is aged 42 years old, male resident of Wabigalo, Project Zone for 15 years. He is a business man selling bananas at Wabigalo for 7 years. The Applicant is his son-in-law. He presented an L.C I letter of Wabigalo village dated 10th April 2015 and Voters Card 11514270. This Surety states that he has known the Applicant for over 15 years and met him before he married his daughter. The second Surety presented was Buuku David, 39 years old, male residing at Mbuya Kinawattaka. He is a Financial Officer at Uganda Revenue Authority. This Surety is a biological brother to the Applicant. Mr. Buuku presented an L.C I letter of Kago Zone 2, Mbuya Parish dated 3rd April 2015 and a work ID, No. 0411-11.

Ms. Asimwe for the Prosecution submitted that the Applicant has only been in prison for 6 months, having been committed on 17th September 2014. Furthermore, that a session will be organised anytime, and the Applicant will be going for trial. Learned Counsel also submitted that the Medical Report by Dr. Andama does not show that the Prisons Hospital cannot control the situation. She contended that the Applicant is responding well to treatment and would not be alive if he was not doing so. Ms. Asimwe also submitted that the paragraph 6 of the main Affidavit shows that the Applicant has a fixed place of abode in Kireka but now his wife lives in Seeta. She argued that despite the explanation, it is not clear whether the Applicant will reside in Kireka or Seeta. The Learned State

Attorney also objected to the 2nd Surety whom she feels does not appear to know the Applicant's children well. In rejoinder, Ms. Athiang for the Applicant stated that the medical report is clear that the Applicant has had several Asthma attacks despite treatments, which shows that the condition cannot be adequately treated there. Regarding the place of abode, Counsel submitted that the Applicant originally resided in Kireka but upon his arrest, his family moved to Seeta.

I have carefully considered the grounds of this Application and the submissions of both Counsel. This Honourable Court has the discretion to release the Applicant on bail. However, this Court is enjoined to exercise its discretion judiciously. I have considered the fact that the Applicant suffers from an illness, to wit, Asthma. However, the Applicant has failed to provide sufficient proof that his condition cannot be handled in prison. The medical report by Dr. Andama shows that the Applicant has a long standing history of the condition but, it is not shown anywhere in that report that there is need for the Applicant to seek urgent medical attention outside the Prisons premises.

The Learned State Attorney has also pointed out that the Applicant does not have a clear place of abode. I am inclined to agree with the Prosecution that the evidence provided does not show whether the Applicant will stay in Kireka or Seeta if released on bail. The Applicant's sureties are not substantial. The first Surety, Mr. Weyune does not seem to know the Applicant well, and does not know the Applicant's family well. Similarly, the second Surety, Mr. Buuku did not impress me also. His knowledge of the family of the Applicant was non-existent. I wonder if he would now be interested in the Applicant's affairs yet took no effort to be there for the Applicant's family. Given that the Sureties may not be able to prevail upon the Applicant to attend Court, I am not inclined to grant bail to the Applicant.

It is also my considered opinion that his condition is being treated well while he is in custody. In my observation, the Applicant did not seem to be in grave condition. This may mean that the medical personnel in the Prisons Medical Unit are managing to contain the said illness. In the circumstances, I hereby **DENY** the Applicant bail. However, I enjoin Dr. Andama to continue availing proper medical treatment to the Applicant. The Court also enjoins the Deputy Registrar, Nakawa High Court Central Circuit to fix the main case for hearing at the earliest date possible.

Signed:.....

HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA

J U D G E

17TH APRIL 2015