

- a) The applicant has a Constitutional right to apply for bail pending trial.
- b) The charges preferred against the applicant are bailable in this honourable Court.
- c) The applicant is still innocent and has a plausible defence on the charge laid out.
- d) The applicant is suffering from a terminal illness, HIV which needs adequate medical care which case can only be attained outside prison.
- e) The applicant has substantial sureties within the jurisdiction of this Court ready to stand surety for him.
- f) The applicant is ready and willing to abide by all terms and conditions as this Honourable Court may be pleased to set.
- g) The applicant has a fixed place of abode at Mawanda Road, Nsooba LC.I within the jurisdiction of this Honourable Court.
- h) The applicant is not likely to interfere with the investigations if granted bail.

3. This application is opposed on the following grounds; that:-

- i. The applicant has failed to show that he has a fixed place of abode having not attached any documentary proof of him being a resident of Mawanda Road, Nsooba LC.I.
- ii. The applicant's ailment can be treated in Luzira Prison where he is detained pending his trial.
- iii. The applicant has not shown that he has substantial sureties having not attached their particulars.
- iv. The applicant has not shown that he has dependants having not attached any documentary proof.

4. Resolution of this application by Court.

In his submissions, Counsel for applicant, Mr. Fitz Patrick Furah, argued each ground of this application separately. He primarily based his arguments on Article 23 (6) (a) of the Constitution. He submitted in support of all the grounds of this application, and prayed that the applicant be granted bail pending his trial in the High Court.

In reply, Counsel for the respondent, Ms. Lillian Nandawula, State Attorney, does not agree with the submissions by Counsel for the applicant. She submitted that the application lacks merit and that the same application be denied by this Court.

From the onset, this application is not supported by the affidavit evidence of the applicant. One could wonder why the applicant/accused opted out to give evidence in form of affidavit evidence in support of his application. Such circumstances in my considered view do weaken the applicant's application.

Thus grounds like applicant's fixed place of abode, having a wife and children he is caring for, whether he believes the sureties to be substantial and whether he will comply with the bail conditions remain in doubt in the minds of the Court. Again, the affidavit in reply and the submissions by Counsel for the respondent created a big doubt in the applicant's case.

On the applicant's ailment, the applicant did not swear an affidavit to prove that he is terminally ill. Attached to the affidavit in support of the application are clinical notes from Mulago infectious diseases institute which were acquired before the commission of the alleged offence. There is no medical report from Luzira Prisons Hospital, Luzira to prove that the applicant is on medication and that the said Hospital Management have failed to manage the applicant's sickness. Section 15 (3) (a) provides that:-

“grave illness certified by a medical officer of the prison or other institution or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody.”

As such, therefore, the applicant failed to prove that his ailment/sickness cannot be treated within Murchison Bay Prison Hospital, Luzira.

Furthermore, I take note that the applicant is already committed to the High Court of Uganda for his trial. His case is pending fixing for hearing soon than later. The Assistant Registrar of this Court is directed to his Criminal Session case for hearing in the next convenient criminal session of the High Court.

5. Conclusion

In closing, considering the affidavits evidence by both parties the submissions by both Counsel for parties, and my analysis of the facts and law pertaining to this application, I found that this application lacks merit. It is accordingly dismissed.

Dated at Kampala this 9th day of November, 2015.

Joseph Murangira
Judge.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL DIVISIONAL
MISCELLANEOUS APPLICATION NO.83 OF 2015

