

- iii. That of the applicant has not commenced to date after a period of over 6 months to date.
- iv. The police and the state have completed the investigations in this matter.
- v. The applicant has a fixed place of abode in Kyebando – Kisalosalu within the jurisdiction of this Honourable Court.
- vi. The applicant is a first time offender and has never been convicted of any criminal offence.
- vii. The applicant is a sole bread winner for three vulnerable dependants.
- viii. It is in the interest of justice that this application is allowed with costs to the applicant.

In his affidavit in support of the Notice of Motion, the applicant reproduced the abovestated grounds.

Counsel for the applicant vehemently argued this application in support of the abovestated grounds of this application. He relied on a number of authorities. He presented four (4) sureties to stand surety for the applicant. He prayed that this application be granted with costs. And that the applicant be granted unconditional bail.

In reply, Counsel for the respondent relied on the grounds which are set out in the respondent's affidavit in reply. The grounds are, that:-

- 1.
- 2. That the applicant failed to prove that he has a fixed place of abode by way of documentary evidence.
- 3. That the applicant has failed to prove that he has substantial sureties.
- 4. That the applicant has failed to prove that exceptional circumstances exist in his case.
- 5.

Counsel for the respondent in reply to the submissions by Counsel for the applicant vehemently argued in support of their grounds in the affidavit in reply. She prayed that in the circumstances of this case, the applicant be denied bail.

I have evaluated the affidavits evidence on record adduced by both parties and considered the submissions by both Counsel for the parties. The applicant is facing a grievous offence of aggravated defilement. However under Article 23 (6) (a) of the Constitution of the Republic of Uganda, such an offence is bailable by the High Court of Uganda.

It is the argument by Counsel for applicant that this Court ought to grant unconditional bail to the applicant. Counsel for the respondent does not agree. I have perused all the authorities cited and relied on by Counsel for the applicant in this application, and it is clear from reading the said authorities that bail is not automatic. Though, that bail is a constitutional right, and that an accused person has a right to apply for bail at any time and during the course of case proceedings. I hasten to add that in the same cases, the Judge or Magistrate has a discretion to grant or not to grant bail. Thus, the argument by Counsel for the applicant that the accused person charged with a grave offence like in this case is entitled to automatic bail must fail.

Again, Counsel for the applicant argued that the applicant has a fixed place of abode in Kyebando Kisalosalu Zone, Kawempe Division. In proving that the applicant has a fixed place of abode, under Section 15 (4) of the Trial on Indictment Act, Cap.23 Laws of Uganda, the onus is on the applicant. The purpose of this requirement or ground is that in event of the accused being granted bail he/she cannot shift to another place. That is such an accused person has to be permanent in that place. In this instant case, the applicant did not produce to Court by way of documentary evidence, like a letter from Local Council one introducing him to Court, evidence that he has fixed assets/properties in the stated place, evidence that he has a known permanent job in that area. To this extent I agree with the submissions by Counsel for the respondent. In addition, in that regard and circumstances the issue of whether or not the sureties are substantial does not, in my considered view, arise. Again, on this point, it should be noted that the applicant is charged with a grave offence which attracts a maximum sentence of death. The applicant is already committed to the

High Court for his trial soon or later. This shows that the applicant already knows the nature of evidence that is going to be adduced against him. Therefore, chances of him absconding trial might, in my view, be high.

Furthermore, I agree with Counsel for the respondent that the applicant failed to prove exceptional circumstances as required under Section 15 (1) and (3) of the Trial on Indictment Act (Supra) which include, grave illness and advance age. The applicant in his application and the affidavit in support did not plead nor adduce evidence in his affidavit in support of this application exceptional circumstance. The case of **Arvind Patel Vs- Uganda (Criminal Application No. 1 of 2003)** which was relied on by Counsel for the applicant, when considering the issue at hand, is distinguishable from the instant case. In that case, the Supreme Court of Uganda was considering bail pending determination of his appeal that was arising from an offence trial by the Magistrate Court. That is the offence that was charged against Arvind Patel was not a grave offence or a capital offence for that matter.

In the subsequent constitutional cases, the Constitutional Court has held that bail is not automatic. Other circumstances of the case have to be considered. In the case of Foundation for Human Rights Initiative Vs- Attorney General, Constitutional Petition No.20 of 2006, the Court held that: -

“Bail is not automatic. That a judge has a discretion to grant or not to grant bail.”

The other circumstances the Court should consider for in a case is whether the applicant has proved among other considerations exceptional circumstances as per Section 15 (1) of the Trial on Indictment Act, Cap. 23 (Supra).

In conclusion, owing to my analysis of the entire case and my conclusions on every ground on which this application is based on, hereinabove in this ruling, I hold that this application has no merit. It is accordingly dismissed.

Dated at Kampala this 4th day of September, 2015.

Ms. Jacquelyn Okwi Senior State Attorney, holding brief for Ms. Nalwanga Sharifah,
Senior State Attorney for the respondent:-

The Counsel for the applicant is absent. The applicant is present in Court.

The matter is coming up for a ruling. We are ready to receive it.

Ms. Margaret Kakunguru, the Clerk is in Court.

Court: Ruling is delivered to the parties in open Court.

Joseph Murangira,

Judge.

04/9/2015