

years and living positively with HIV/Aids. This evidence is supported by documentary evidence, a medical report from Nakasongola Health Centre IV, marked “A”, “B” and “C” and annexed to that said affidavit in support of this application. The applicant further state in his affidavit in support of this application that he has a requiring kidney and liver complication which is worsening since his detention in prison. He also adduced evidence by annexing medical report/notes and scan from Mengo Hospital to that effect and marked in a bundle as annexure “C”

In paragraph 9 of his affidavit in support of his application, the applicant stated that he has a fixed place of abode at Rukooge, Razwama, Karungi Sub-county, Nakasongola District, where he lives with his family. He produced to Court on introduction letter from his LCI Chairman of his village, which confirms that he is a resident of Rukooge village. To strengthen his application; the applicant presented two sureties, who had introduction letters from their LCI Chairman of Rukooge village, Razwana Karungi Sub-county, Nakasongola District. They also have voter’s cards confirming their places of residence.

In her reply, Counsel for the respondent objected to the bail application. In her submissions, Counsel for the respondent argued that the applicant is charged with aggravated defilement for which he can be sentenced to death if found guilty. That the applicant’s ailments referred to can be managed in prison where he is in detention. That the applicant has no fixed place of abode and house not attached any documentary proof to prove his performance in Rukooge village, Razwama, Karungi Sub-county in Nakasongola District. That the sureties presented to Court by the applicant are not substantial. That the applicant failed to prove that he has exceptional circumstances as required by law. She prayed that the applicant’s application be disallowed.

It should be noted first and foremost that bail, though a Constitutional right, is not automatic. The Judge or Magistrate has discretion to grant bail or not to grant bail to an accused person depending on the circumstance of each particular case. There are a number of decided cases that support my argument.

In this instant applicant, I agree with both Counsel for the parties that the applicant is facing with a grave charge of aggravated defilement. However, this Honourable Court has jurisdiction to grant bail in all offences including capital offences under which that the offence of aggravated defilement. The Constitution of the Republic of Uganda and the Trial on Indictments Act, Cap.23 do empower this Court to grant bail. The applicant adduced evidence that he is of advanced age, being aged 67 years old. Counsel for the respondent argued that the applicant failed to prove that he aged 67 years. I have looked at the applicant's voter's card and it shows that the applicant was born in 1950. I take judicial notice that a voter's card is a National document and can be relied on to determine the case of the applicant. Again, the applicant appeared before me during the hearing of this application, he has grey hair and indeed he is an old man. And as such I make a finding that the applicant is over 65 years; and that he is of an advanced age.

Consequent to the above, the applicant stated that he has grave illness as he is living positively with HIV/Aids and that has kidney and liver complications. Counsel for the respondent in her reply does not negative that affidavit evidence by the applicant. Her contention is that such ailments can be managed by Nakasongola Health Centre IV while he is in prison. To that extent, I agree with Counsel for the applicant that the applicant is suffering from grave illness. Therefore, the applicant proved exceptional circumstances as required under Section 15 of the Trial on Indictment Act, Cap 23.

As regards the fixed place of abode of the applicant, the applicant produced a letter of introduction from his area Chairman. That letter demonstrates that the applicant is a resident of Rukooge village Razwama, Karungi sub-county, Nakasongola District. Then the applicant has a voter's card, a copy of which is on the Court record as part of evidence of the applicant, which shows that by 2004 when it was issued, he was a resident of Rukooge village. I, therefore, agree with Counsel for the applicant that the applicant is a resident of Rukooge village, Razwama, Kamangi Sub-county, Nakasongola District.

On the sureties, I have considered their particulars on the Court record. Each surety has a voter's card and an introduction letter from his/her LCI Chairman of Rukooge village. The voter's cards were issued in 2004 and show that each surety is a resident of Rukooge village. The sureties are also residents in the same area with the applicant. I, thus, agree with Counsel for the applicant that the sureties are people who have access to the applicant and can compel him to come and attend Court when required. Therefore, the sureties presented to Court to stand surety for the applicant are substantial.

Wherefore, in consideration of the affidavits evidence by both parties on record, the submissions by both Counsel for the parties and my own analysis of the parties' submission I find that this application has merit. It is accordingly allowed in the following terms:-

1. The applicant is granted a cash bail of Shs. 2,000,000/= (two million) pending his trial by the High Court of Uganda.
2. Each surety is bound in sum of Shs. 10,000,000/= (ten million Shillings) not cash.
3. The applicant shall be reporting to the Chief Magistrate/Magistrate Grade 1 of the Chief Magistrate's Court of Nakasongola, at Nakasongola every last Wednesday of the month starting with this month of September, 2015, unless there are other orders from this Court.

Dated at Kampala 4th day of September, 2015.

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Joseph Murangira

Judge

His lawyer is not in Court.

The matter is for a ruling and we are ready to receive it for the applicant now enters the Court.

Ms. Margaret Kakunguru, the Clerk is in Court.

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

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Joseph Murangira

Judge

04/9/15