

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL DIVISION

CRIMINAL MISCELLANEOUS APPLICATION NO.94 OF 2015

(Arising from Makindye Magistrate's Court, Criminal Case No. 119 of 2013)

1. OMUSUGU DANIEL

2.

MUNIKWA

JOSEPH :::APPLICANTS

VERSUS

**UGANDA:::RESPONDE
NT**

RULING BY HON.MR. JUSTICE JOSEPH MURANGIRA

1. Introduction

The applicants are represented by Mr. Moses Ingura from M/S Fredrick Kangwamu & Co. Advocates. Whereas the respondent is represented by M/S Nandawula Lillian State Attorney working with the Directorate of Public Prosecutions.

2. This application is brought by Notice of Motion and supported by an affidavit that was sworn by the applicants on 17th November,2015. This application is brought under Article 23 (6) (a), (c) of the Constitution of the Republic of Uganda, 1995, and Section 14 of the Trial on Indictments Act, Cap. 23, Laws of Uganda.

Badly

This application is for bail pending the applicants' trial. This application is seeking the following Orders; that:-

- a) The applicants be granted bail pending trial in the High Court.
- b) The applicants have been in custody for a period of two (2) years without trial.

- c) It is the accused's Constitutional right to be released on bail pending trial.
- d) It is in the interest of justice that the applicants be granted bail.

This application; further, is based on the following grounds; that:-

- i. The offence with which the applicants are charged with is only bailable by High Court.
 - ii. From May, 2013 when the applicants were committed, the trial has not commenced.
 - iii. The applicants are young persons with young families that badly need their help as they are the only bread winners.
 - iv. The education, welfare and parental care of their innocent children is at stake and if the applicants are finally found innocent, their families will have innocently suffered.
 - v. The applicants will highly be prejudiced if they are not granted bail.
3. The respondent filed in Court an affidavit in reply based on the following grounds; that:-
- 1) The applicants have not shown that they have fixed places of abode having not attached any documentary proof.
 - 2) The applicants have not shown that they have substantial sureties having not attached their particulars.
 - 3) The applicants have not shown that they have dependants having not attached any documentary proof.
 - 4) The applicants have not shown that exceptional circumstances exist in the favour.

It is noted that the applicants never filed any affidavits in rejoinder to this application and in rebuttal to the respondent's affidavit in reply. It is trite law that when a party raises certain facts in an affidavit, and the same is not rebutted in the affidavit in reply, it is presumed that the said facts were admitted by the opposite party. In his submissions, Counsel for the applicants tendered to cover the aforesaid aspect. However, in doing so, Counsel for the applicants ran a risk of adducing evidence from the bar, which is not allowed in law.

The law regarding consideration of bail applications pending trial is settled. In the case of Constitutional reference No.20 of 2005, Uganda (DPP) -VS- Col (Rtd) Dr. Kiiza Besigye, the Constitutional Court of Uganda held that:-

“Under Article 23 (6) of the Constitution, Courts have the discretion to grant or not to grant bail.”

See also the case of Foundation for Human Rights Initiative –VS- Attorney General Constitutional Petition No.20 of 2006.

In the instant application, I have considered the submissions by Counsel for the parties for and against this application. I have also considered the grounds under which this application is based on and the grounds in the affidavit in reply. I had also the benefit of perusing the summary of the case against the applicants and found them scaring enough. And since the applicants now knew the evidence that is going to be adduced against them, and for the facts that they are charged with aggravated robbery of Ug. Shs. 11,000,000/= (eleven million shillings) and 50 grams of Gold worth US\$ 3500, the applicants are likely to jump bail and abscond from trial.

Therefore, this is a case where I have to exercise my discretion and in the interest of justice to decline granting bail to the applicants.

Accordingly, therefore, I find that this application has no merit.

It is accordingly dismissed.

Dated at Kampala this 23rd day of December, 2015.

Joseph Murangira.

Judge.

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PRESENTATION

The applicants are in Court.

Their lawyer is absent.

The State Attorney is absent.

Ms. Lillian Kagaso, the Clerk is in Court.

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

Joseph Murangira

Judge

23/12/15