

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
MISCELLANEOUS CRIMINAL APPLICATION No. 0030 OF 2016

ADRIKO YUDAS **APPLICANT**

VERSUS

UGANDA **RESPONDENT**

Before: Hon Justice Stephen Mubiru.

RULING

This is an application for bail. The applicant is indicted with two counts of Aggravated Defilement c/s 129 (3) and (4) (a) of *The Penal Code Act*. It is alleged that on 12th June 2015 at Ndrivu village, in Arua District, the accused had unlawful sexual intercourse with two sisters, Angucia Fosca and Maneno Comfort, both girls being below the age of 14 years. He was subsequently committed for trial by the High Court but is yet to be tried and hence this application by which he seeks to be released on bail pending his trial.

His application is by notice of motion under Article 23 (6) (a) and (c) of the *Constitution of the Republic of Uganda*, sections 14 and 15 (4) of the *Trial on Indictments Act Cap.23*. It is dated 4th November 2016 and is supported by his affidavit sworn on the same day. The main grounds of his application as stated in the notice of motion and supporting affidavit are that; the applicant has been on remand for over a year without trial; he is a father and breadwinner for his family, has substantial sureties willing to guarantee his attendance of court, he is willing to abide by all conditions which may be set by court for his release on bail and has a fixed place of abode at Laruba village, Pokea Parish, Pajulu sub-county in Arua District, within the jurisdiction of the Court.

In an affidavit in reply sworn by a one D/Cpl. Idha on 10th November 2016, she states that she is the investigating officer of the case, and that the state is opposed to the grant of bail to the applicant mainly on grounds that; the accused is facing two counts each carrying a maximum

penalty of death and is likely to jump bail, he has already been committed for trial, and there are no exceptional circumstances to be considered in his favour.

At the hearing of the application, the applicant was represented by Mr. Buha Mohammed while the state was represented by Mr. Emmanuel Pirimba, State Attorney. Counsel for the applicant, in his submissions, elaborated further the grounds stated in the motion and supporting affidavit and presented three sureties for the applicant. In his response, the learned State Attorney too elaborated further the grounds for opposing the application as contained in the affidavit in reply, and in the alternative prayed for stringent conditions to be set in the event that the court is inclined to grant bail..

Persons accused of criminal offences have a right to apply for bail by virtue of Article 23 (6) (a) and 28 (3) of the *Constitution of the Republic of Uganda*. However, the grant of bail is discretionary to the court (see *Uganda v Kiiza Besigye; Const. Ref No. 20 of 2005*). By virtue of sections 14 and 15 of the *Trial on Indictments Act*, a person indicted may only be released on bail if he or she proves to the satisfaction of the court that exceptional circumstances do exist to warrant his or her being released on bail. The circumstances which are regarded as exceptional include grave sickness, infancy or old age, and if the state does not oppose the applicant being released on bail. These exceptional circumstances though are not mandatory as courts have the discretion to grant bail even where none is proved. The applicant does not seek to rely on any of those circumstances in this application.

It is trite law that under Article 28(3) of the *Constitution of the Republic of Uganda*, every person is presumed innocent until proved guilty or pleads guilty. Consequently, an accused person should not be kept on remand unnecessarily without trial. In well deserving cases the accused person should be granted bail if he or she fulfils the conditions for his or her release. An Applicant should not be incarcerated if he or she is unlikely to abscond or interfere with witnesses for the prosecution, has a fixed place of abode, has sound sureties capable of guaranteeing that he or she will comply with the conditions of his or her bail and is willing to abide by all other conditions set by the court.

In deciding whether or not to grant of bail, the court will consider the personal circumstances of the accused, the circumstances of the crime and other relevant information which includes; the

seriousness of the offence; the need to protect the victim of the offence; protection of the community from further offending; the strength of the prosecution's case; the severity of the possible sentence; the probability of conviction; the prior criminal history of the accused; the potential to interfere with prosecution witnesses; the possible delay in conducting the trial; the requirements for preparing a defence; and the view of the police Criminal Investigations Department and prosecution.

The onus is placed upon the accused person to show why a grant of bail is appropriate, and the Court is often able to craft conditions around the need for the protection of the victim and witnesses. It is usually impossible at this stage to determine all the circumstances of the offence including its nature in its entirety, the seriousness and the strength of the prosecution case. However in this case, considering the gravity of the accusation made against the accused in light of the circumstances surrounding the commission of the offence as contained in the affidavit in reply, this would not be a proper case to disregard the requirement of proving exceptional circumstances.

Although, the applicant is presumed innocent and is entitled to be freed from incarceration to prepare for his appearance in court, obtain legal representation, and be free for any other lawful purpose, including caring for his family, however court should be mindful of the possibility of the grant of bail being turned into an end in itself by having the practical effect of terminating the pending trial even before it starts. The right balance must be struck between ensuring the appropriate disposal of the pending case, and safeguarding the rights of accused person.

This application comes against the backdrop of a significant number of cases within this circuit where accused persons have been granted bail and their subsequent trials have been frustrated by the unwillingness of witnesses to turn up to testify or the absence of accused persons themselves who abscond after grant of bail. Committal for trial presupposes the existence of facts established through investigation, which raise reasonable suspicion against the accused at the least but also a reasonable prospect of conviction. For those reasons, an indictment presented to the High court should only be disposed of in four ways; by conduct of a full trial, by a successful plea bargain, by filing of a *nolle prosequi* or by the demise of the accused where, in the latter case, the indictment will abate. An accused committed for trial deserves to have the suspicion around him or her cleared in one of those ways and it is incumbent upon court to guarantee that

the right to apply for bail is not abused by using it as an avenue to short-circuit the administration of criminal justice. Bail should be granted after court is fully satisfied that it is deserved on account of the presumption of innocence and the need for the accused to prepare for the trial but will not in the circumstances of the case be used to frustrate the trial. The paramount consideration for the grant or refusal of bail is the promotion of the proper administration of criminal justice by promoting fairness in the process, to the accused, the victim(s) and society at large. It is a balancing act. Bail should not be granted where prospects are high of compromising the administration of criminal justice by the accused absconding, compounding the offence or in any other way rendering prosecution of the case impossible.

I have considered the facts as pleaded and the arguments of counsel before me. It is incumbent upon court to balance the right to apply for bail with the need to guarantee the integrity of the criminal justice system by preventing the use of bail as a facility and vehicle for the compounding or otherwise preventing the prosecution of such serious felonies, to the detriment of vulnerable victims.

In this application, the court has not been furnished with any facts that provide an assurance that the grant of bail will not compromise the possibility of disposal of the pending indictment by one of the four methods adverted to before. That possibility of proper disposal of the indictment is usually guaranteed by the imposition of rigorous terms as conditions for release on bail, including requiring the accused to enter into an undertaking prohibiting contact with, or proximity to the complainant or other witnesses, which then the sureties would be required to supervise, monitor and guarantee. It was incumbent upon the applicant to satisfy court that the grant of bail is appropriate in this case but he has been unable to satisfy court that he will not instead use bail as an end in itself. In any event, this court has undertaken a rigorous exercise to clear the existing case backlog and prospects that the applicant will be tried soon are high.

In light of all those considerations, this is not a proper case in which bail should be granted in absence of proof of exceptional circumstances. The application is accordingly dismissed.

Dated at Arua this 28th day of November, 2016.

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Stephen Mubiru
Judge.