

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

CRIMINAL MISC. APPLICATION NO. 19 OF 2016

MUZALE BOSCO.....APPLICANT

VERSUS

UGANDA.....RESPONDENT

RULING

BEFORE: HON. LADY JUSTICE EVA K. LUSWATA

The applicant presented this application under **Article 23[6] and 28[3] of the Constitution of the Republic of Uganda 1995 and Section 14 and 15 of the Trial on Indictment Act [TIA]**, for an order to be released on bail pending his trial. Briefly the grounds relied on are as follows:-

- [1] The applicant who is presumed innocent has a fundamental right to apply for bail and he has no previous criminal antecedents.
- [2] The applicant has a fixed place of abode within the jurisdiction of this court and will not interfere with witnesses when released on bail.
- [3] The applicant has substantial sureties.

The above grounds were substantiated in the applicant's affidavit in support of the application and the respondent filed no affidavit in reply thereto.

Upon failure of his counsel to appear in Court, the applicant chose to represent himself. He professed to be completely illiterate and thus unaware of the contents of his affidavit in support of the application. However, he stated that his advocate had read back the contents to him. The affidavit did not include a certificate of translation to lend credence to that submission.

I have noted during this Criminal [bail] session the extreme non-observance of most counsel in matters of criminal procedure when presenting bail applications. It is a provision under the Illiterates Protection Act Cap. 78, that a statement made on oath by an illiterate deponent must contain a certificate of translation made by the person who translated its contents to the deponent and confirmed that he/she understood its contents before he/she signs/thumb prints. It was not done in this case and therefore, the Court has basis to believe that the applicant understands the contents of his application or even, his obligations and expectations of the Court upon his release on bail. My observations formed a substantial part of the respondent's submissions and Ms. Nabaggala argued that the requirement to include a certificate is mandatory and that in fact, I am mandated to reject such an affidavit.

That said, the right to bail is one which is constitutional and should not be treated lightly. At this point in the proceedings, the Court cannot ignore the fact that the applicant is still considered innocent with a right to answer the trial outside a place of detention. What is important, is for him to fulfil the requirement for him/her to be granted bail. Knowing that the applicant is unrepresented, I therefore choose to exercise my discretion to disregard these many anomalies to consider the application and in addition, the submissions made by the applicant himself on oath during the proceedings.

The applicant in response to questions put to him by Court stated that he was 28 years of age, remanded on 4/8/14 leaving a family with children who are suffering because he was the sole bread winner. He stated his home to be in Namutumba Bukonte and he presented a letter of the LC Chairperson to support that submission. He then presented two sureties as follows:-

- [1] **IRENE NAMUNANA** 37 years, hotel cook, resident of Bukonte Budhatema Village, Nzinze Sub County in Namutumba District and holder of National ID No. 077486823 and Tel No. 0771693634. Applicant's sister
- [2] **GWANTAWO JAMES**, 41 years, peasant farmer, resident of Bukhonte Budhatema B village, Nsinze Sub County, Namutumba District. Applicant's brother and holder of

National ID No. 007486507 and Tel No. 0777149210. He admitted not to know his duties as a surety.

Ms. Nabagala argued that the second surety should not be entrusted with duties of a surety since he did not know his responsibilities and also pointed out the discrepancies between his identity and the documents, and what was disclosed to Court. She further highlighted the discrepancies of some of the averments in the applicant's affidavit [regarding his arrest and residence] in contrast to what he stated in Court.

In view of the objections raised by the respondent, I will re-emphasize the importance of the applicant's stated place of abode. It is expected to be the address of first recourse in the event the applicant fails to turn up for his trial. Thus, it is important for the Court to have assurance of its certainty and authenticity.

In his affidavit, the applicant gave his address as Mufubira, with no details of the actual location or district. To the contrary, during his oral testimony, he gave his address as Namutumba Bukonte and even produced a recommendation of the LCI Chairman of the area. In clarification, the applicant explained that he had changed addresses after his arrest and detention. In my view, that was an important factor that necessitated that the applicant swear a supplementary affidavit to explain the circumstances under which he changed address of abode since he was, by then, under detention. He did not do so.

However, even if he had done so, I noted that the recommendation given by the LCI Chairman, Bukonte-Budhatemwa, Nsiinze Sub County, Namutumba District was grossly inaccurate. The Chairman stated he knew the applicant since he was born and had been a resident of his area since then. This would mean the applicant was a lifetime resident of Bukonte-Budhatemwa yet he himself had stated in his affidavit and even in Court that he had changed addresses from Mufubira to Bukonte after he was arrested and remanded. That would date back only up to August 2014. One of these two accounts is false which would leave the applicant's true place of abode uncertain.

Again, Gwantawo the second surety confessed not to know his duties as a surety. I would be reluctant to release the applicant to a person who is not educated of his duties. I am not satisfied he will have the tenacity to ensure the applicant's attendance for trial.

I would conclude that without a certain fixed place of abode, and a surety being found not to be substantial, the applicant's ability to return to attend his trial or the Court's ability to compel him to do so is equally not certain. Since there is no guarantee that he will not abscond, I am unable to grant the application and it is accordingly denied.

I so order.

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EVA K. LUSWATA

JUDGE

27/10/16