

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

CRIMINAL MISC. APPLICATION NO. 45 OF 2016

LUTALO

ANDREW.....APPLICANT

T

VERSUS

**UGANDA.....
RESPONDENT**

RULING

BEFORE: HON. LADY JUSTICE EVA K. LUSWATA

The applicant presented this application under **Article 28[1] of the Constitution of the Republic of Uganda 1995 (as amended) and Section 15 and 17(1) of the Trial on Indictment Act [TIA]**, for an order to be released on bail pending his trial. Ms. Esther Adikini represented the applicant, while the respondent was represented by Ms. Shamim Nalule.

Briefly the grounds relied on are as follows:-

- [1] The applicant was arrested and charged with the offence of rape an offence bailable by the High Court.
- [2] The respondent has a constitutional right to apply for bail
- [3] The applicant has a family of children, a wife and elderly mother and he is their sole bread winner
- [4] The applicant has a permanent place of abode at Seeta Village, Goma Sub County in Mukono District.

- [5] The applicant has sureties and he will abide by the conditions set for bail
- [6] It is in the interests of justice for the applicant to be released on bail.

The above grounds were substantiated in the applicant's affidavit in support of, and supplementary to the application. Respondent's counsel filed no affidavit in reply thereto citing reasons of late service upon her. Applicant's counsel in her submissions stressed that her client had confirmed his fixed place of abode to be LCI Ntinda Zone, Goma, in Mukono District within the jurisdiction of this Court and would thereby attend trial. She then presented three sureties on behalf of the applicant namely:-

- [1] **MUSA LWESIMBAWO** 51 years, businessman involved in transport business between Jinja and Kampala, resident of Kiwanga, Lwanda Cell, Goma Division in Mukono District and holder of National ID No. 004985317 and Tel Nos. 0772481673 and 0700294443. Step father of applicant
- [2] **KIBUUKA JONATHAN**, 44 years, businessman, electronic business in Seeta, known as Pay Less Technical services, resident of Seeta Ntinda Zone, Goma Division, in Mukono District and holder of National ID No. 000786812 and Tel Nos. 0712522796 and 0704216037. Maternal uncle of applicant
- [3] **SALONGO SENFUMA STEPHEN**, 60 years, farmer, resident of Seeta Ntinda Zone, Seeta Ward, in Mukono District. No National ID. Tel No. 0753720899 and 0704216037. Paternal uncle of applicant.

It was reported that Senfuuma had misplaced his national Identity card but there was no police report to confirm that submission. Applicant's counsel then pointed out that the sureties presented being relatives of the accused and resident within the jurisdiction of the Court, were substantial and invited Court to find them accordingly. She stressed that the applicant is a family man, responsible and a director of a company registered in Mukono who needed to continue with his work during the trial. She prayed for favorable terms if bail was granted.

Ms. Nalule opposed the application stating that the applicant is accused of a very serious offence with a possible death sentence. Having put some questions to the sureties, she objected to their substantiality for in her view, they seemed not to know the applicant well enough and gave a

contradicting account of the number of children born to one Nabukalu, the applicant's mother. She opined that the applicant did not convince Court that he will not abscond once released. She continued that no exceptional circumstances were presented to support the applicant's release and the Court has a duty to consider the applicant's right to bail *vis a vis* the rights of other Ugandans. She concluded that now that the applicant is committed to the High Court, the prosecution was prepared to prosecute the case.

Ms. Adikini invited the Court to disregard the objections raised, stating that the applicant had presented a definite place of abode and the evidence with respect to the sureties was available on the record.

Every accused person has the right under Article **23[6][a] of the Constitution** to apply for bail. That right is founded in the principle that a person is presumed innocent until proven guilty by a competent court or until such person voluntarily pleads guilty to the charge. It has been resounded in many authorities before this, that the primary purpose of bail should be to ensure that the applicant appears to stand trial without the necessity of being detained in custody during the period of trial. See for example **Col. [Rtd] Dr. Kizza Besigye Vrs. Uganda – Criminal Application No. 83/2016**.

The right to bail is generally provided for under **Sections 14 and 15 of the Trial on Indictments Act** and in all instances, the power to grant or refuse bail is at the discretion of the Court. Of main concern to the court in all applications and not least the one before me, is that the accused will not abscond when released on bail. It is important therefore that the applicant confirms his fixed place of abode and presents sound sureties who will ensure his attendance in court and who can be called upon in the event he absconds.

The objections by the respondent hinged on the substantiality of the sureties presented. I did note the discrepancies in the information given about one Nabukalu's number of children. However with due respect, the discrepancies were not that serious judging that Nabukalu appears to have had children in multiple relationships. What is important is that the three sureties appeared to know the applicant well and gave an account of his childhood and early education well enough.

In my view, the sureties are expected to account for the accused and not necessarily his relatives, this may of course change in certain contexts. On the whole, having considered the documents they presented, their demeanor and relationship to the applicant, I found the three sureties substantial.

There was also an objection that no special circumstances were presented for the applicant to be released on bail. This may be so, but there is authority to support the argument that, this is not a mandatory requirement. In my view, and I am supported by the law in my thinking that, the requirement of the applicant's place of abode is Central to any application for bail. The requirement for the accused to have a fixed place of abode within the jurisdiction of court is very important because in this case, it is he and not his sureties who should be present to answer the charge. As it is, the applicant is charged with a capital offence and thus, the likelihood of absconding is proportionately higher. His place of abode must be certain, for only then can he be traced if he absconds. I note that the applicant gave a fixed address of abode within the jurisdiction of the Court which was not seriously contested. He in addition submitted that he had a Community Based Organisation registered by the Mukono Municipal Council.

I would conclude therefore that the applicant has in his evidence and sureties satisfied me that he will attend his trial if released. I would accordingly allow the application. I hasten to add that the offence for which he is charged is a very serious one and the conditions of bail given will accordingly reflect that aspect.

I therefore grant the applicant bail on the following conditions:-

- [1] A cash bail of Shs.2,000,000/=.
- [2] Each surety is bonded at Shs. 3,000,000 each, not cash.
- [3] The applicant is to report to the Registrar of this Court once every month for the extension of his bail with effect from 26/11/2016.

I so order.

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EVA K. LUSWATA

JUDGE

25/10/16