

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

CRIMINAL MISC. APPLICATION NO. 0037 OF 2016

LUMALA

DAVID.....APPLICANT

VERSUS

UGANDA.....RESPONDENT

RULING

BEFORE: HON. LADY JUSTICE EVA K. LUSWATA

The applicant presented this application under **Article 23[6] of the Constitution of the Republic of Uganda 1995** and **Section 14 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 indicted for aggravated defilement was committed for trial on 14/12/12, has never been tried.
- [2] The offence for which he is charged is bailable by the High Court
- [3] The applicant is married and sole bread winner of his family and an elderly mother.
- [4] The applicant has substantial sureties.
- [5] The applicant has a fixed place of abode at Buikwe Village, Malongwe Parish, Ajija Sub County in Buikwe District, within the jurisdiction of this Court.
- [6] The applicant will not abscond once released and is committed to abide by the bail terms given.
- [7] It is just and equitable that the applicant is released on bail pending his trial.

The applicant and his sureties each swore an affidavit in support of the application. There was no affidavit sworn for the respondent.

Muziransa, counsel for the applicant generally repeated the contents of the applicant's affidavit and in addition stated that his client who has been on remand since 27/10/12 has no criminal record. He insisted that the Court which is clothed with discretion to release the applicant on bail should consider the fact that he will not abscond if released especially because he has given an address of abode and presented substantial sureties whose details are as follows:-

- [1] **MUGALU VINCENT** brother, aged 51 years. Resident of Malongwe Village, Buikwe District and holder of National ID No. 005061295 and cell No. 0782959682.
- [2] **KIBONEKA KAWOOZA MICHEAL**, aged 49 years. Resident of Malongwe Village, Buikwe District and holder of National ID No. 017939562 and cell No. 0785679849.

Ms. Nabagala opposed the application stating that there is no proof of the applicant's place of abode certified by an LC and that no supporting documents were presented for Surety No. 2, Kiboneka Kawooza . That documents should not be allowed at the hearing which offends the provisions of the Judicature Act (Criminal Procedure) (Applications) Rules SI 13-8, and the end result would be that the applicant had not presented substantial sureties.

In response, Muzilansa argued that identity cards of both sureties were attached to the application and they were present in Court and could be interviewed by the Judge. That obtaining information for the applicant's place of abode was difficult since he is in incarceration. When interviewed by the Court, the applicant stated he was arrested in Buzinderi village in Mukono District and that before his arrest, he was a business man dealing in poultry farming and fishing. Kawooza one of the sureties, was consistent in his responses that the applicant was his paternal cousin and the other surety, Mugalu, revealed that the applicant is married to one Namboowa with whom he has two teenage children.

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 **Section 14 and 15 of the TIA** 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.

I have noted that save for their identification and the statements made in Court, no other evidence was presented to confirm the addresses of the sureties or the applicant himself. The requirement for the accused to have a fixed place of abode within the jurisdiction of court cannot be understated because 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. The arguments by his counsel that procuring his address would be difficult cannot exonerate him from presenting to court all possible evidence that would direct the Court to his whereabouts in case he absconds during the trial. Further, the National IDs of the sureties contain an address which is assumed to have been the address of that person at the time of the national registration which took place way back in early 2015. The Court cannot be certain that the same addresses are still maintained to ensure that they reside within the jurisdiction of this Court or, in close proximity of the accused so as to ensure his attendance to Court for his trial. I would therefore find much merit in the objections raised for the respondent that the applicant has not presented substantial sureties. Any sureties substantiality goes beyond mere identification.

I cannot fail to comment that the applicant who has been on remand for a considerable time, was seriously let down by his counsel who had the duty to ensure that all relevant evidence possible was arraigned before Court. There would be no excuse for that since this matter was adjourned at least 4 times before the actual hearing. In my view, there was ample time for adequate preparation.

I would accordingly deny the application and for now, direct that hearing of this case be added to the nearest criminal session cause list.

I so order.

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EVA K. LUSWATA

JUDGE

12/10/16