

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
MISCELLANEOUS CRIMINAL APPLICATION No. 0024 OF 2015
(Arising from H.C. Cr. Case. No. 0028 of 2012)

1. **BIDONG ZENONE** }
2. **ORUIBENGU FRANCIS** } **APPLICANTS**
3. **OKURAMU RICHARD** }

VERSUS

UGANDA **RESPONDENT**

Before: Hon Justice Stephen Mubiru.

RULING

This is an application for bail. The three applicants are jointly indicted with the offence of murder c/s 188 and 189 of the *Penal Code Act*. It is alleged that on 5th February 2012 at Katera Village in Zombo District, they murdered a one Dokcen Samuel by slitting his throat. The first applicant is the father of the other two applicants. They were on 14th July 2012, committed for trial by the High Court. They are yet to be tried and hence this joint application by which they seek to be released on bail pending their trial.

Their 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 of the *Trial on Indictments Act Cap.23* and rules 2 and 4 of the *Judicature (Criminal Procedure) (Application) Rules S.I 13-8*. It is dated 22nd December 2015 and it is supported by three separate affidavits, sworn by each of the applicants respectively on the same date. The main grounds of this application as stated in the notice of motion and supporting affidavits are that; the offence with which they are indicted is bailable, they have been on remand for over three years after committal without trial yet they are presumed innocent, they have fixed places of abode within the jurisdiction of the court and that they have substantial persons willing to be their sureties.

In an affidavit in reply sworn by a one D/AIP Mundua Isaac on 1st July 2016, and who claims to have recorded the charge and caution statements of the applicants during the investigation of the case, the state is opposed to the grant of bail to all three applicants mainly on grounds that; the first applicant confessed to having committed the offence, that the underlying cause behind the commission of the offence was a suspicion of witchcraft thereby raising a very high likelihood of retaliatory mob justice against the applicants by the relatives of the deceased, the gravity of the offence against them as creating a high temptation of flight and that there are no exceptional circumstances justifying their release on bail.

At the hearing of the application, the applicants were represented by Mr. Samuel Odama while the state was represented by Mr. Pirimba Emmanuel, State Attorney. Counsel for the applicant, in his submissions, elaborated on the grounds stated in the motion and supporting affidavits and presented two sureties for each of the applicants. In his response, the State Attorney too elaborated on the grounds for opposing the application as contained in the affidavit in reply and in the alternative, prayed for stringent conditions in the event that the court is inclined to grant them bail.

Whereas accused persons have a right to apply for bail by virtue of Article 23 (6) (a) and 23 (3) of the *Constitution of the Republic of Uganda*, the grant of bail is discretionary to the court (see *Uganda Vs Kiiza Besigye; Const. Ref No. 20 OF 2005*). By virtue of sections 14 and 15 of the *Trial on Indictments Act*, a person indicted can only be released on bail if he or she proves to the satisfaction of the court that special circumstances do exist to warrant his or her being released on bail. The circumstances which are regarded a special include grave sickness, infancy or old age, the fact that the applicant has been on remand for over 12 months before committal for trial, as per article 23(6) (c) of the Constitution and that the state does not oppose the applicant being released on bail. Proof of these circumstances though is not mandatory as courts have the discretion to grant bail even where none is proved.

It is correct 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 persons should indeed be granted bail if they fulfill the conditions for their release. An Applicant should not be incarcerated if he has a fixed place of abode, has sound sureties capable of

guaranteeing that he will comply with the conditions of his or her bail and is willing to abide by all other conditions set by the court.

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 indictment and the affidavit in reply, this would not be a proper case to disregard the requirement of proving exceptional circumstances. The circumstances not only raise a very high likelihood of escaping trial, but also the grant of bail would expose the applicants to the danger of mob justice. Furthermore, this court is privy to the cause-list for the Criminal Session starting tomorrow 15th July 2016 for trials to be conducted by this court and the case involving these applicants is one of them. The delay that has been experienced hitherto is coming to an end.

In the circumstances I do not find merit in the application and hereby dismiss it. The accused are to remain on remand until further orders of this court. I so order.

Dated at Arua this 14th day of July, 2016.

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Stephen Mubiru
Judge.