

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
MISCELLANEOUS CRIMINAL APPLICATION No. 0001 OF 2016
(Arising from H.C Cr. Case. No. 0024 of 2015)

OCAKACON JAMES } **APPLICANT**

VERSUS

UGANDA **RESPONDENT**

Before: Hon Justice Stephen Mubiru.

RULING

This is an application for bail. The applicant is indicted with three other persons for the offence of Aggravated Robbery c/s 285 and 286 (2) of the *Penal Code Act*. It is alleged in four different counts that on 8th September 2014 in the waters of Lake Albert in Nebbi District, he together with the other two accused, robbed eight different fishermen a total of twenty seven fleets of nets while threatening them with pangas and swords. He and his co-accused were on 24th December 2014, committed for trial by the High Court. They are yet to be tried and hence this application by which 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 of the *Trial on Indictments Act Cap.23* and rule 3 of the *Judicature (Criminal Procedure) (Applications) Rules S.I 13-8*. It is dated 6th January 2016 and it is supported his affidavit sworn on the same date. The main grounds of his application as stated in the notice of motion and supporting affidavit are that; the offence with which he is indicted is bailable, he is a juvenile aged seventeen years and has been on remand for over two years after committal without trial yet he is presumed innocent, he has a fixed place of abode at Dei village, Panyimur Sub-county, Nebbi District within the jurisdiction of this court, has substantial persons willing to be his sureties and he has been sickly with frequent asthmatic attacks. He attached a photocopy of an in-patient medical sheet and clinical notes for the period running from 28.11.2015 to 4.12.2015.

In an affidavit in reply sworn by a one No 20229 Detective corporal Wathum Mabernga Gelasyous on 9th July 2016, who claims to be the investigating officer 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 and led the police in recovering the stolen items, that the at the time the accused was charged he claimed to be eighteen years and not seventeen years old, that he will be exposed to danger from the victims of the offence who are businessmen, that the gravity of the offence against him creates a high temptation to abscond and that there are no exceptional circumstances justifying his release on bail.

At the hearing of the application, the applicant was represented by Mr. Samuel Odama while the state was represented by Mr. Pirimba Emmanuel, State Attorney. Counsel for the applicant, in his submissions, elaborated further the grounds stated in the motion and supporting affidavit and presented two 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 in the event that the court is inclined to grant them bail.

Indeed 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 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 may 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, and that the state does not oppose the applicant being released on bail. Alternatively, the fact that the applicant has been on remand for over twelve months before committal for trial, as per article 23(6) (c) of the Constitution, may be considered. Proof of these circumstances could be an additional consideration. These exceptional circumstances though are not mandatory as courts have the discretion to grant bail even where none is proved.

In this case, the applicant in his affidavit claims to be aged seventeen years, and relies on this as an exceptional circumstance. This fact is contested by the respond in the affidavit reply where it is said that at the time of his arrest, he claimed to be eighteen years old. Since this is a contested fact, the burden lay on the applicant to prove it. This court has not been provided with credible

evidence on basis of which it can find the exceptional circumstance of infancy as having been proven. In that regard, I find that the applicant has not proved any exceptional circumstance.

Be that as it may, this court is empowered to exercise its discretion to grant bail even when none of the exceptional circumstances have been proved. I am not persuaded that the circumstances of the accusation give rise to a very high likelihood of escaping trial, neither am I convinced that releasing the applicant on bail would expose him to the danger of mob justice, considering that the stolen item were recovered during the investigation.

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 this applicant is not among them. His trial is not likely to start soon. His attendance of trial can be guaranteed by the imposition of rigorous terms as conditions for his release on bail. I am satisfied with the sureties that he presented in court as persons capable of guaranteeing his attendance of the trial, when the case is eventually fixed. The learned State Attorney too conceded that the applicant presented substantial sureties.

In the circumstances I do find merit in the application and hereby order the accused to be released on bail on the following terms; -

1. The applicant is to execute and pay a cash bond of Shs. 1,000,000/=
2. Each of his sureties is to execute a non-cash bond of Shs. 8,000,000/=
3. The applicant is to report to the Assistant Registrar of this Court on the first Monday of every Month until the disposal of the appeal or further orders of the court.

In the circumstances, this application is allowed. I order the release of the applicant on bail subject to him meeting the above conditions, failure of which he is to be remanded. I so order

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

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Stephen Mubiru
Judge.