

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**CRIMINAL DIVISION**

**HCT-00- CR-CM- 0369 – 2016**

- 1. KANYAMUNYU MATHEW MUYOGOMA**
- 2. MUNWANGARI CYTNIA :::::::::::::::::::::APPLICANTS**
- 3. KANYAMUNYU JOSEPH**

**VERSUS**

**UGANDA :::::::::::::::::::::PROSECUTION**

**BEFORE: THE HON. LADY JUSTICE E.K KABANDA**

**RULING OF THE COURT**

**Facts**

The applicants seeks orders as follows,

1. Applicants be granted bail pending hearing of the criminal case (underlined added.)
2. Any other relief as court may deem fit to be given.

Grounds are set out in the motion and supporting affidavits of respective applicants alongside their respective additional affidavits. Briefly, the grounds are:-

- a) Applicants are jointly charged with the offence of murder that is triable and bailable by the court.
- b) They are responsible members of society.
- c) The applicants have at all material times been law abiding citizens and have never been charged and/or convicted with any criminal offence.
- d) The 3<sup>rd</sup> applicant is married with a family whereof he is the sole bread winner.
- e) The applicants have fixed places of abode in Kampala District within the jurisdiction of this honourable court, and
- f) They shall not abscond if released on bail and have substantial sureties to ensure they shall attend court at all material times.

The application is opposed. The affidavit in reply D/SSP Olal Dale Johnson deponed on 9<sup>th</sup> January, 2017 sets out the following grounds,

- a) Applicants have no fixed places of abode.
- b) They have failed to prove substantial sureties,
- c) Applicants have not been committed to High Court, for investigations are on going thus the likelihood to interfere with witnesses.
- d) The 2<sup>nd</sup> applicant's status in Uganda is unknown.
- e) Applicants have no exceptional circumstances in their favour.
- f) Applicants did not voluntarily reported to police.

### **Representation**

Mr. Muwheezi Ronald, together with Mr. Mpumwire Abraham and Mr. Innocent Habwomugisha of Bashasha, Habwomugisha & Co. Advocates represented the applicants at the hearing of the application'. The respondent (DPP) was represented jointly by Principal State Attorney Samalie Wakhooli and Senior State Attorney Okwir Jackeline. Parties were invited to make oral submissions in open court.

### **Background**

The back ground facts to the application are that the applicants are jointly charged before the Chief Magistrate's Court of Nakawa criminal case No. AA- 031 of 2016 under section 188 & 189 of the Penal Code Act, Cap 120 with the offence of murder of Akena Kenneth Watmon. Investigations in the criminal case are on going. In the meantime, the applicants are on remand pending trial. Mr Kanyamunyu Mathew Muyogoma, Miss Munyanwari Cythia and Mr. Kanyamunyu Joseph, (hereinafter called respectively the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants) filed High Court criminal miscellaneous application No.0369 of 2016 under Article 23 (b), (a) and 28 (3) (a) of the Constitution of Uganda, 1995 and section 14 of the Trial on Indictment Act, Cap. 23 alongside Rule 2 of the Criminal Procedure (Application) Rules seeking release on bail.

### **The evidence**

Am alive to the social background of the applicants as set out in paragraphs 2, 3, 4 and 5 of respective affidavits in support by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants. Except that it is disputed that the applicants reported to police voluntarily. But to my mind so far as it has no bearing on the likelihood of the applicants to abscond once released on bail, the manner in which the

accused persons were each taken into police custody is not a material consideration for exercise of the discretion of the court under ss14 & 15 of the Trial on Indictment Act, under circumstances of this case.

Furthermore, am cognisant of the 1<sup>st</sup> applicant's place of abode at Butabika LC.I, thus leaving no doubt in my mind that the 1<sup>st</sup> applicant has a fixed abode within jurisdiction of the court irrespective whether or not he is an established landlord or tenant of the said location. The 2<sup>nd</sup> and 3<sup>rd</sup> applicants presented documentary evidence of respective letters from Lake Drive Zone Council 1 Port Bell Luzira & Kiwafu 'B' Zone LC1 to prove that they each have a fixed place of abode in the court's jurisdiction. For her part, the 2<sup>nd</sup> has dual nationality of Rwanda and Burundi. Equally, paragraph 2 of the 2<sup>nd</sup> applicant's affidavit in support is disputed in that the 2<sup>nd</sup> applicant does not have an established business in Uganda. Clearly Passport No. OP0058109 in named of the 2<sup>nd</sup> applicant indicates that the 2<sup>nd</sup> applicant is in possession of only a work permit for Uganda thereby dispelling the claim that the 2<sup>nd</sup> applicant has a legally established business in Uganda. As for the 3<sup>rd</sup> applicant, the respondent submitted and I agree that the letter dated 15th November 2016 that is annexure 'B' to the 3<sup>rd</sup> applicant's affidavit in support does not seem to prove that the 3<sup>rd</sup> respondent has a fixed place of abode within jurisdiction of the court as at the time the application was filed on 19th December 2016. Clearly the said documentary evidence precedes the date of the application. Presence of a fixed place of abode minimises the likelihood for the accused to abscond once released on bail.

Am mindful that in the respective additional affidavits, each of the applicants presented sureties for consideration for release on bail who all seem to have fixed abodes within jurisdiction of the court and means of employment. Therefore sureties are substantial. Accordingly, the submission by the respondent that some unnamed sureties work abroad, remains unsubstantiated.

### **The law**

The law applicable to bail is settled in the case of *Uganda (DPP) Vs. Col (RTD) Dr. Kiiza Besigye, Constitution reference No. 20 of 2005.* The accused has the right to apply to court to be released on bail and the court has the discretion whether or not to grant bail under Article 23 (6) (a) of the Constitution of Uganda, 1995 which provides that the person is entitled to apply to the court to be released on bail and the court may grant that person bail on such conditions as the court considers reasonable - See also *Malibano Abdu and Another Vrs*

Uganda Criminal Miscellaneous application No. 5 of 2008 (High Court Kampala) unreported, cited by the respondent.

Capital offences such as murder are bailable. However, whether or not the court is inclined to exercise the discretion whether to grant or not grant bail is a matter depending on circumstances of each particular case to be weighed on individual merits or demerits of the case. It is established that release on bail is not automatic. Whether or not to release the accused on bail is a preserve of the discretion of court. The accepted position in the cited cases of Uganda Vs. Col (RTD) Dr. Kiiza Besigye (Supra) and Hon. Guma Gumisiriza David Vs. Uganda, High Court Criminal Misc. Application No.023 of 2011 (Mbarara) is that in considering whether to or not to grant bail, the court would need to balance the Constitutional right of the applicant, the needs of society to be protected from lawlessness and considerations which flow from people being remanded in prison custody which welfare and that of their families and not least the effect on prison remand conditions if large numbers of unconverted people are remanded in custody. This is not all. The Constitutional right to apply for bail ought to be balanced with the other peculiar circumstances of the case. Circumstances that guide the exercise of the discretion whether to or not to grant bail is permitted by Section 15 (2) of the Trial of Indictment Act. Under the section, the High Court has the discretion to refuse to grant bail to the accused person if he or she does not prove exceptional circumstances justifying his or her release on bail. Clearly exceptional circumstances are a mere guide for the exercise of the discretion of court whether or not to grant bail. Additionally, the court must be satisfied that there is no likelihood of the applicant to abscond and not turn up for trial. Either circumstances have to be weighed with equal measure.

The likelihood of the accused to abscond or not to abscond is determined by such factors as whether the applicant has a fixed place of abode within the Court's jurisdiction, or is ordinarily resident in Uganda, presence of sound sureties within jurisdiction, whether the applicant has been released on bail on a previous occasion and failed to comply with bail terms and conditions and whether there are other charges pending against the accused. Above all, the court in setting bail conditions must exercise its discretion judicially basing on merits and demerits of each particular case. Further, the refusal to grant bail must not be based on mere allegations.

Here is a situation where the applicants are charged with murder an offence of a grave nature. Court has considered the sureties presented and found them substantial. Tin addition, the contention by the state that the applicants are likely to interfere with enquiries is speculation, unsupported with proof.

**The decision**

I decline to grant bail to the 2<sup>nd</sup> and 3<sup>rd</sup> applicant because absence of proof that they each have a fixed place of abode increases chances that they will abscond. With regard to all three applicants, there are no exceptional circumstances presented. The offence of murder is a grave offence. Therefore there is a need to give the prosecution the benefit of doubt, which is that the applicants are due to be committed for trial to the High Court in the week following, this being a charge which was instituted very recently on 22<sup>nd</sup> November 2016. The ends of justice in the matter require a speedy trial. In event that applicants are not committed for trial in the coming week as stated by the respondent, they are of liberty to re-apply for bail as a means to safeguard the constitutional right to bail and a speedy trial. The end result is that the application is dismissed.

Dated the 10<sup>th</sup> day of January 2017.

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**E.K KABANDA**

Judge