

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CRIMINAL DIVISION)

HCT-00-CR-CN-0177 OF 2017

(FROM: HCT-00-CR-SC-0039-2017)

KANYAMUNYU MATHEW MUYOGOMA ::::::::::: APPLICANT

VERSUS

UGANDA ::::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE J. W. KWESIGA

RULING:

The Applicant, by virtue of the committal proceedings of 31st January 2017, is pending trial by the High Court of Uganda under Criminal Session case No. 0039 of 2017 for Murder, Contrary to Section 188 & 189 of the Penal Code Act. The trial date has not been fixed. The lower court record shows that he has been on pre-trial remand since 22nd November 2016

His application by Notice of Motion, supported by an affidavit sworn on 13th September 2017 with several attachments seeks that this court grants him Bail pending trial. Apart from basing the application on the known enabling provisions of the Law;-

- (a) He states the likelihood of not being afforded a trial soon subjecting him to long pre-trial detention.
- (b) That the investigations are complete and there is no likelihood of interference with the state witness/evidence.

- (c) That he has substantial sureties to ensure compliancy with bail terms.
- (d) That he has a fixed place of abode within the jurisdiction.

The Directorate of Public Prosecution filed two affidavits, one of Sharifah Nalwanga, a Senior State Attorney and Olal Dale Johnson (D/SSP), the Lead Investigating Officer. The aggregate substance of contention is that:-

- (a) The Applicant did not own any permanent premises, but was a tenant of various landlords.
- (b) That the Applicant had previously applied for bail but was rejected by another Judge.
- (c) That no exceptional circumstances have been established.
- (d) That the summary of evidence justifies the charge of murder.
- (e) That there is a need to protect society from Lawlessness.

The application is further accompanied by a bundle of proposed six (6) sureties which was addressed to the Director of Public Prosecutions and filed as a record in court on 2nd October 2017 by M/s. Ochieng Associated Advocates.

Apart from the filings above considered, each party was given opportunity to address this court on merits of each parties' respective contentions. I will refer to these arguments at a later stage in this ruling, but I will now state my view of the Law applicable to this type of application. I expressed my views on granting or rejecting bail application in my earlier Ruling in High Court **Criminal Misc. Application No. 52 of 2017 – MOAZU KROMAR VERSUS UGANDA** that ***"Article 23(6) of the Constitution of Uganda provides that a person whose liberty has been deprived***

by imprisonment before trial or when not serving a sentence be free to apply for bail. However, in exercising the discretion to grant or not to grant bail all interests of justice of the Applicant, the Respondent and the society as a whole ought to be given adequate and appropriate consideration".

In my view the paramount factors to consider are mainly the following:-

- (i) Protection of interests of justice by ruling out interference with the course of justice; e.g if the Applicant is granted bail, will he interfere with investigation, for instance, will he make it difficult for recovery of exhibits or preservation of a scene of crime essential for the trial review?
- (ii) Would he be a danger to society? Is there likelihood that he would commit other criminal offences, whether similar to the instance case or not?
- (iii) Would he abscond and frustrate the trial if released on bail? The overriding of these is whether the Applicant will not abscond and will always appear for his trial and that should the state or court require enforcement of his presence it is assured. This guarantee is what is expected of sureties, who the court must assess to be possessed of the ability and influence or prevail over the Accused/Applicant to attend Court.

Reference has been made to the fact that this Applicant made a number of unsuccessful applications in this court but before different Judges and that circumstances have not changed. In my view, each bail application is an application ab initio. It is not an Appeal from a previous one and cannot be a review of the previous one and it is for this reason that I make no reference to the reasons why the previous application failed. In my view the argument of whether or not the circumstances have changed is appropriate if the application is before the Judge who first rejected the

earlier application. There is no doubt that Murder under Section 188 & 189 of the Penal Code are serious offences, However, it is not fair to determine whether or not bail should be granted by evaluating the application on the contents of the summary of evidence perse, because this would offend the Applicant's presumption of innocence. This position becomes even more plausible because there are several trials which have ended in no case to answer or terminated by nolle prosequi where there had been strong sounding and damning summaries of evidence. However, I do not rule out that the summary of evidence could be considered as part of the circumstances a court could have regard to in the exercise of it's desertion. The position of fears and allegations of what would negatively result from granting bail was settled in **PANJUR VERSUS REPUBLIC (1973) E.A 282** that ***"If courts are simply to act on allegations, fears or suspicions, then the sky is the limit and one can envisage no occasion when bail would be granted whenever such allegations are made"***.

Paragraph 4 of the affidavit of D/SSP Olal Dale Johnson is to the effect that the Applicant has no place of abode because he lives in LandLord's properties as a Tenant. This statement hold no sense at all. In this City of millions of residents cannot be declared homeless because they own no properties or do not live in properties of their own. What would be stated of the several government organizations that occupy rented premises, would the poor people in this country be entitled to bail?

On the contrary, the applicant under Paragraph 23 of his affidavit proved that he has a home at Royal Palms Estate house No. 20, Plot No. 100/114, Butabika Road. This evidence has not been displaced by a proof to the contrary. In **Misc. Application No. 65 of 2004, Mugenyi Steven Versus Uganda;** Justice Remmy K. Kasule (as he then was) held; ***"The onus is on the Applicant to satisfy that he has a permanent place of abode in a particular known village, subcounty, county and district. This is to enable court exercise jurisdiction over the***

Applicant while on bail being able to trace his whereabouts whenever it is necessary".

In my view, the Applicant has passed this test set by Justice Remmy K. Kasule above.

Mr. Ochieng Evans who appeared for the Applicant present a total of five sureties, namely;-

1. Mrs. Merian Sebunya – Applicant's Aunt.
2. Mrs. Stella B. Karuhanga – Applicant's Aunt.
3. Mr. Julius Kanyamunyu – Applicant's Uncle.
4. Mr. Moses Emmy Karuhanga - Cousin brother
5. Hon. Gad K. Gasatura – Applicant's Guardian.

Ms. Immaculate Angutoko, Senior State Attorney representing the state conceded that the sureties are substantial, save that she feared that the sureties would not succeed in their commitment in absence of definite Applicant's permanent place of abode.

The duty of the surities to the court does not end if the Applicant changes residence. I agree that tenancy agreements are commercial contracts that contain termination clauses usable by either the tenant or the landlord depending on circumstances of case. Bail conditions cannot include keeping the Applicant in same house, what is important is that he will keep within the jurisdiction of this court which is in the whole of the Republic of Uganda. The burden will be on the shoulders of the sureties to ensure they assist the court to prevail over the Applicant to appear for his trial and comply with any other bail terms and conditions.

I have considered the extra circumstances expressed in the second ground of the application, the ***"uncertainty of when the substantive trial would start"*** and ***Paragraph 9 of the Applicants' affidavit in support of this application namely, this court's policy of hearing***

cases on the basis of first in, first out” which would mean longer pre-trial detention. My appreciation of these circumstances is derived from my taking judicial notice that for now the policy of this court is to line up trials by taking up the oldest pending case and that the court is faced with inadequate human resources, Limited Judges, which has contributed to case backlog and consequently cases under trial are offences committed in 2013. By necessary implication, unless the policy is revisited and /or modified, the Applicant who was committed on 31st January 2017 would be triad much later, a situation that offends his Constitutional right to a speedy trial. The other circumstances applicable is the need to decongest the prison whose admission has by far exceeded it’s capacity. This is a problem particularly where the remanded inmates outnumber the tried and convicted persons. This has national financial implications that I am alive to which can be reduced by granting bail, including automatic bail provided for by the Law when conditions allow and terminating cases where prosecution has failed to secure convictions.

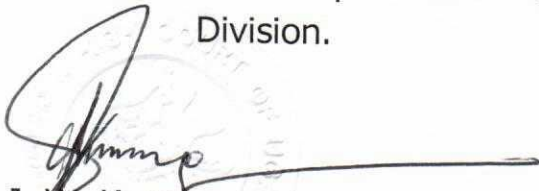
Finally I must state that Bail is not an end in itself and the presumption of innocence is capable of ending by a conviction. This case, if bail is granted will join the causelist of scheduled trials of people on bail.

I have considered the Law governing granting bail pending trial that I have examined and applied to this application in exercising my judicious discretion and I have found that the Applicant has a permanent place of abode within the jurisdiction of this court, the five sureties presented to this court are substantial and capable of prevailing over the Applicant to abide by the terms of bail and in event of his failure the sureties will be liable as Ordered before.

In the event that the Applicant breaches any terms/conditions, the State will be free to apply for cancellation of this bail granted on the following terms:-

1. The Applicant is allowed Bail on conditions that:-

- (a) He deposits his passport with the Registrar of this court not later than 7 days from the date of this Order.
- (b) Executes a cash bond of Ug. Shs. 10,000,000/= (Ten million only).
- (c) Each of the 5 approved sureties shall execute a bond of Ug. Shs. 10,000,000/= (not cash).
- (d) The Applicant shall report his presence to the Deputy Registrar of this court once a month with effect from **6th November 2017** until final disposal of his trial or until this court Orders otherwise.
- (e) Not to travel outside the jurisdiction of this court except with a written permission of the Deputy Registrar of the Criminal Division.



J. W. Kwesiga

Judge

4/10/2017

In the presence of:-

- The Applicant
- Mr. Ochieng Evans for Applicant.
- Ms. Angutoko Immaculate, SSA for the State.
- Mr. Kayemba Edward – Court Clerk.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA CRIMINAL DIVISION
CRIMINAL MISC. APPLICATION NO. 177 OF 2017
(Arising from HCT-00-CR-SC-0039-2017)
KANYAMUNYU MATHEW MUYOGOMA..... APPLICANT
VERSUS
UGANDA RESPONDENT

ORDER

This Application coming up for final disposal this 04th day of October 2017 before Hon. Mr. Justice Wilson Kwesiga, Judge of the High Court,

IT IS HEREBY ORDERED AS FOLLOWS:

1. That the Applicant deposits his passport with the Registrar of this Court within seven (7) days from the date of the order.
2. That the Applicant executes a cash bond of Ug. Shs. 10,000,000/= (Ten Million Shillings).
3. That each of the five (5) approved sureties to execute a bond of Ug. Shs. 10,000,000/= (not cash).
4. That the Applicant to report his presence to the Deputy Registrar of this court once a month with effect from 6th November, 2017 until final disposal of his trial or until this court orders otherwise.
5. That the Applicant is not to travel outside the jurisdiction of this court except with a written permission of the Deputy Registrar of the Criminal Division.

GIVEN under my hand and seal of this Court this 13 day of oct 2017.


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Emmanuel Baguma

Assistant Registrar -Criminal Division