THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT ARUA

MISCELLANEOUS CRIMINAL APPLICATION No. 0020 OF 2016

1. ABINDI RONALD }
2. ADOMATI VINCENT } …… APPLICANTS

VERSUS

UGANDA ……..…… RESPONDENT

Before: Hon Justice Stephen Mubiru.

RULING

This is an application for bail. The two applicants are jointly indicted with the offence of murder c/s 188 and 189 of the *Penal Code Act*. It is alleged that on 23rd November 2016 at Nduu village, Onbu Parish Ofaka sub-county, Madiokolo County in Arua District, they murdered a one Ernest Ariba as part of a larger group, upon suspicion that he was practicing witchcraft. The applicants are brothers aged 18 years and 20 years respectively at the time they were charged. They were on 13th November 2016, 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) (c) and 28 (3) of the *Constitution of the Republic of Uganda,* and sections 14 and 15 of the *Trial on Indictments Act Cap.23*. It is dated 10th August 2016 and it is supported by two separate affidavits, sworn by each of the applicants respectively on 6th September 2016. 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, the first applicant suffers from hernia, their trial has not started 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/CPL Alekua on 11th November 2016, who states that he is the investigation officer of the case, the state is opposed to the grant of bail to both applicants mainly on grounds that; the applicants face a serious offence punishable with death, 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 Ondoma while the state was represented by Ms. Gertrude Nyipir, State Attorney. Counsel for the applicants, in his submissions, elaborated further the grounds stated in the motion and supporting affidavits and presented four sureties for both applicants as follows; the first surety is Mr. Stanley Alex, 61 years old, resident at Nduu village, Olibu Parish, Ofaka sub-county, Madiokolo County in Arua District. He ia a peasant farmer. The two applicants are his biological children. He did not know his phone number off the cuff (his counsel presented it as 0776609479). The second surety is Aniku Jimmy, 45 years old, resident at Nduu village, Olibu Parish, Ofaka sub-county, Madiokolo County in Arua District. He is a peasant farmer. The two applicants are his brothers. His phone numbers are 0792075676 and 0785303631. The third surety is Limara Hanningtone, 47 years old, resident at Nduu village, Olibu Parish, Ofaka sub-county, Madiokolo County in Arua District. He is a peasant farmer. The two applicants are his nephews. He does not have a phone contact. The fourth and last surety is Onzima Richard, 42 years old, his national ID was stolen but he reported to Arua Police Station. He resides in Kisaasi in Kampala, Kawempe Division. He is in the business of supply of T-shirts and Bill boards under the company M/s Delta Signs and Designs. The two applicants are his brothers. His phone contact is 0772498483.

In her response, the State Attorney too elaborated further the grounds for opposing the application as contained in the affidavit in reply. She refuted the suitability of the fourth surety as not being substantial on grounds that there was a mismatch between the letter he produced, being from Nduu village and his actual place of residence in Kisaasi in Kampala, Kawempe Division. He may therefore not be able to produce the accused. In the alternative, she prayed for stringent conditions in the event that the court is inclined to grant the applicants 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 v. 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 exceptional include grave sickness, infancy or old age 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.

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 before 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.

The decision whether or not to grant bail is of fundamental importance in the process of prosecution and trial of a criminal case. The results of such a decision can have far reaching consequences for the liberty of the accused, the safety of victims of crime and the public in general interested in the integrity of the criminal justice system. It is a decision that must be reached after careful consideration of the material presented to court, taking into account the risk posed to victims, the public and the course of justice, carefully balancing all interests involved and ensuring to the extent that it is possible, that none of the interests is unduly prejudiced at the expense of another. The applicable principle is that of upholding the liberty of the individual, while simultaneously protecting the administration of justice.

The public policy perspective as reflected in section 15 of the *Trial on Indictments Act* holds that an accused person should not be released on bail provided there is a reasonable suspicion against such person that he or she has committed the type of serious offence specified in the section, and is therefore in the opinion of the Court, a potential threat to the victims or to other innocent members of society or is perceived by them on reasonable grounds to be such a threat or a person likely to evade justice. It is the reason why in such cases bail is granted only on proof of exceptional circumstances. Considering the gravity of the accusation made against the applicants and in light of the circumstances surrounding the commission of the offence as contained in the affidavit in reply, this would not be a proper case to disregard the requirement of exceptional

circumstances. In his submissions, counsel for the two applicants indicated that they went into hiding soon after the offence was committed even when they knew and claim that the offence was committed by two other people named in their respective affidavits. In the circumstances, their likelihood to abscond is heightened even the more now that they have been committed for trial. Belief in their innocence at the early stages of investigations did not prevent them from going into hiding and I am not satisfied that it will do so after committal. The sureties presented were unable to prevent the applicants from going into hiding at the initial stages of the investigations; they are unlikely to prevent them after committal as well. The first applicant has not produced any medical evidence to back his claim that he suffers from hernia.

The circumstances in which the offence was committed not only create a very high likelihood of escaping trial, but also the grant of bail would expose the applicants to the danger of mob justice. In coming to a decision, the court must not lose sight of the fact that the applicants are presumed innocent but at the same time will not ignore the fact that their committal for trial, at a bare minimum, is based on a reasonable suspicion. The question is whether or not in the circumstances, the applicants pose a threat to public safety or the integrity of the prosecution. The basis of believing that the applicants will be a probable target for reprisals is that according to the affidavit in reply, the killing was perpetrated by a mob. For the applicants as persons singled out as suspects in such circumstances, whether justifiably or not, there would be a reasonable basis, not a mere speculation, to fear that they can be the target of reprisal attacks if released on bail before the passions that led to their arrest have been allowed to cool down. The relatives of the deceased, who probably know the applicants very well and live close to them, pose a risk of real danger of being attacked by or of attacking the applicants. I do not at this moment in time, perceive of any conditions which if imposed, will prevent such an eventuality. Furthermore, the applicants were only comparatively recently committed for trial and there is a very high likelihood of their case being heard before the end of this year. The relatively short delay that has been experienced hitherto will soon come to an end.

In *Hurnam v. State of Mauritius [2006] 1 WLR 857*, PC, it was held that;

> A person charged with a serious offence, facing a severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drugs cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a

> result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail, but they do not do so of themselves, without more. They are factors relevant to the judgment whether, in all the circumstances, it is necessary to deprive the applicant of his liberty. Whether or not that is the conclusion reached, clear and explicit reasons should be given.

On an application for bail by an accused charged with a serious offence, all that is required of court is to demonstrate that it has considered such safeguards as are proffered by the applicants as being sufficient to overcome any concerns which the court may have about granting bail. The only safeguards advanced by the applicants in the instant application are the sureties. I have given careful consideration to the circumstances surrounding the offence, to the sureties offered by the applicants and I have not found any measures stringent enough to protect the applicants from the danger of reprisal attacks and from interfering with the prosecution witnesses. I am of the considered opinion that the respondent has advanced substantial grounds for believing that granting the applicants bail at this stage of the proceedings is not in the best interests of the administration of justice but also will compromise public safety. Release of the applicants at this point in time will endanger their own lives as well as that of other members of their community.

In the result, I find that the applicants have not furnished any reliable evidence to support their grounds for release on bail or offered safeguards sufficient to overcome the concerns which the court has expressed about granting them bail. It is for those reasons that I decided to dismiss their applications.

Dated at Arua this 4th day of April, 2014.

……..

Stephen Mubiru
Judge.
04.04.2017.