

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA**

**CRIMINAL MISC. APPLICATION NO. 0008 OF 2018**

**[Arising out of Iganga Chief Magistrate’s Court Criminal Case No. AA-19/2016]**

**TWEDEDE**

**WILBERFORCE.....APPLICANT**

**VERSUS**

**UGANDA.....RESPONDENT**

**AND**

**CRIMINAL MISC. APPLICATION NO. 0009 OF 2018**

**[Arising out of Iganga Chief Magistrate’s Court Criminal Case No. AA-19/2016]**

**MAAKA**

**BUMALI.....APPLICANT**

**VERSUS**

**UGANDA.....RESPONDENT**

**RULING**

**BEFORE: HON. LADY JUSTICE EVA K. LUSWATA**

The applicants presented separate applications by amended motions under **Articles 23(1), 23[6] [a-b], 28 (3)(a) and 139[1] of the Constitution of the Republic of Uganda 1995 and Section**

**14[1](a) and 15 of the Trial on Indictment Act [TIA],and S.9 of the Constitution Amendment Act 2005 and Rule 2 of the Judicature (Criminal Procedure)(Applications) Rules SI 13-8** for an order to be released on bail pending trial. The grounds relied on by each applicant were similar. They are briefly reproduced as follows:-

- [1] The applicants are innocent under the law until proven guilty.
- [2] The applicants who have families dependent on them have fixed places of abode within the jurisdiction of this Court. Their families are suffering due to their incarceration as the sole bread winners
- [3] Both applicants confirmed that they had substantial sureties and would not jump bail if released.
- [4] It is just and equitable that the application is granted.

Both applicants filed affidavits to support the motions. In addition to the above grounds, it was stated for Twedede Wilberforce that, he was aged 45 years and a resident of Kiringa A. Nawangaiza Parish, Nawandala Sub County in Iganga District. That he was on 25/1/16, arrested on allegations that he had murdered one Kirunda Yowabu and detained at the Nawandala Police Post. He was subsequently charged with murder at the Iganga Chief Magistrate's Court and committed to the High Court for trial on 14/7/16. That at the time of his arrest, he was married to Nangobi Teddy and had nine children (named) and other people dependent on him for sustenance. He mentioned his sureties and again undertook to abide by any bail conditions given. He continued that he had no other pending charges and believed the advice of his legal counsel that he had a constitutional right to apply for bail.

On the other hand, Maaka Bumali stated that he is also a resident of Kiringa A. Nawangaiza Parish, Nawandala Sub County in Iganga District. That he was on 25/1/16, arrested on allegations that he had murdered one Kirunda Yowabu and detained at the Nawandala Police Post. He was subsequently charged with murder at the Iganga Chief Magistrate's Court and committed to the High Court for trial on 14/7/16 and remains on remand at the Kirinya Government Prison. He also listed his sureties and again undertook to abide by any bail conditions given. That he had no other pending charges and believed the advice of his legal counsel that he had a constitutional right to apply for bail.

At the hearing of 13/12/18, after confirming that the two applicants were jointly charged for the murder of one KirundaYowabu, under similar facts, I directed for the consolidation of the two applications. The applicants were represented by counsel Richard Kumbuga, while Emmanuel Peremba, represented the state.

Counsel Kumbuga generally adopted the contents of the application before presenting the following sureties for each applicant.

**For Twedede Wilberforce**

1. **Nangobi Teddy** resident of Kiringa Nawangaiza Parish, Nawandala Sub County in Iganga District. Wife of Applicant No.1 aged 44 years, a peasant
2. **Biita Asuman** resident of Kiringa Nawangaiza Parish, Nawandala Sub County in Iganga District. Brother of Applicant No.1 aged 42 years, a peasant
3. **Ngobi Kirunda** resident of Kiringa Nawangaiza Parish, Nawandala Sub County in Iganga District. Uncle of Applicant No.1 aged 61 years, a peasant

**For Bumali Maaka**

1. **Kalinaki Peter** resident of Kiringa LCI A Nawangaiza Parish, Nawandala Sub County in Iganga District. Friend of applicant. Vice chairperson LCI aged 75 years, a peasant
2. **Namutebi Resty** resident of Kiringa Nawangaiza Parish, Nawandala Sub County in Iganga District. Neighbor of Applicant, aged 37 years, a peasant
3. **Wakibi Ismail** resident of Kiringa A Nawangaiza Parish, Nawandala Sub County in Iganga District. A friend of the Applicant aged 49 years, a peasant

He then moved court for an order of bail pending trial with a request that if the order is for a cash bail, then it should be reasonable since the applicants have been on remand for over three years, yet they are the bread winners.

Counsel Peremba contested the applications citing the seriousness of the charge and severity of the possible sentence. He charged that the State was ready to commence trial and called for the case to be cause listed or in the alternative, bail be granted only with conditions that would ensure the applicants' attendance of their trial.

In a brief reply, Kumbuga stated that bail is granted on the assumption of innocence even where the applicant stands charged of multiple or serious offences. That the release will ease the applicants' preparation of their defence and that their continued long incarceration did amount to an injustice.

The right to bail is guaranteed under Article **23[6][a] of the Constitution**.

Counsel Kumbuga's submissions that the principle of the applicants' innocence at this point in the proceedings is therefore correct. Those charged with serious crimes like murder, are not excluded because the primary purpose of bail should be to ensure that the applicant appears to stand trial without the necessity of being detained in custody during the period of trial. See for example **Col. [Rtd] Dr. Kizza Besigye Vrs. Uganda – Criminal Application No. 83/2016**.

The right to bail is generally provided for under **Section 14 and 15 of the Trial on Indictments Act** and in all instances, the power to grant or refuse bail is at the discretion of the Court. Of main concern to the court in all applications and not least the one before me, is that the accused will not abscond when released on bail. It is important therefore that the applicants confirm their fixed place of abode and present sound sureties who will ensure their attendance in court, and who can be called upon in the event they abscond. The requirement for and duties of sureties cannot be underestimated, for they are seen by court as the members of the public who will police the applicants in their area of residence and ensure their attendance for the trial. They therefore must be persons of integrity, mature and have close geographical and where possible, blood proximity to the applicant.

Both applicants gave addresses of abode, which were confirmed by individual letters of the LCI A Kiringa, Nawandala Sub County dated 22/2/19. I found Twedede's sureties substantial. A wife, uncle and brother of the applicant should be close enough and influential enough to ensure his attendance at the trial. I move to grant him bail.

On the other hand, I was not impressed with Bumali and his sureties. He did not present any relatives to stand for him. Ms. Namutebi Resty claiming to be an immediate neighbor did not appear serious or well aware of her duties of a surety. She presented as though only casually chosen to appear before me. Wakibi also a neighbor claimed to have known Bumali for ten years, yet Bumali claimed to have migrated to the village from Jinja Masese in 2012. Kalinaki failed to prove that he was the LCI vice Chairperson. I would have expected him to have had some documentation or identification to that effect, at a hearing for bail.

I would under such circumstances decline to release Maaka Bumali on bail.

Therefore, the application succeeds in respect of Twedede Wilberforce who is released on bail on the following conditions:-

1. Cash bail of Shs. 3,000,000 only.
2. Non cash bail against each one of his sureties to the tune of Shs. 10,000,000 only.
3. The applicant Twedede Wilberforce shall report to the Registrar of this Court on the 10<sup>th</sup> day of each month with effect from 10<sup>th</sup> June, 2019.

I order that any contravention of the above terms will result into automatic cancellation of the bail granted.

I so order.

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**EVA K. LUSWATA**

**JUDGE**

**29/4/19**