

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

**CRIMINAL MISC. APPLICATION NO. 20 OF 2018**

**NTALE JOSEPH.....APPLICANT**

**VERSUS**

**UGANDA.....RESPONDENT**

**RULING**

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

The applicant filed this application for bail under **Article 23[6][a] of the Constitution of the Republic of Uganda 1995, and Sections 14 (1) and (4) of the of the TIA and Rule 2 of the Judicature (Criminal Procedure) (Applications) Rules.** The application which is supported by the applicant's two affidavits raised grounds which can be summarized as follows:-

- [1] The applicant is indicted of aggravated defilement which is only bailable by this court.
- [2] Bail is a constitutional right and the applicant has a constitutional right to apply for his release on bail.
- [4] The applicant has been on remand since February 2016 without trial and due to the busy schedule and backlog at the High Court; there is a possibility of delay in his prosecution.
- [6] The applicant has a fixed place of abode and three sureties to ensure his attendance in Court whenever required
- [5] It is in the interest of justice that Court grants this application.

In his affidavit filed on 10/5/18, the applicant stated that he was arrested and charged on 11/2/16 and subsequently committed for trial on 6/6/16. He has a fixed place of abode at Matuba Village, Mayuge Parish, Imanyiro Sub County in Mayuge District within the jurisdiction of this Court, and three substantial sureties who are close relatives.

His initial application for bail was denied due to lack of exceptional circumstances and he now pledges to abide by all conditions that the Court may impose, should the application succeed.

At the hearing Ms. Adikini who represented the applicant briefly recounted the contents of the application before presenting three sureties as follows:-

- [1] **WAISWA CHARLES**, aged 35 years, applicant's cousin resident of Matuba, Mayuge Parish, Imanyiro Sub County in Mayuge District. A driver with Mayuge Sugar Factory.
- [2] **BASOGA STANLEY** aged 56 years applicant's elder brother, resident of Matuba, Mayuge Parish, Imanyiro Sub County in Mayuge District. A peasant farmer.
- [3] **BUDHUGO KEZEKIA** resident of Buwekula LCI, Mafubira Sub County, Jinja District. A teacher in Bugobi High School, Namutumba.

Mr. Peremba for the state objected to the application. He argued that the applicant is faced with a serious offence, with a maximum penalty of death on conviction. That since he has already been committed to the High Court for trial, there was likelihood that he would abscond to escape the possibility of this severe punishment. He also objected to the third surety, but conceded that should the Court be inclined to grant bail, then it should do only on stringent terms.

Ms Adikini rejoined by stating that at this point, the charges are mere allegations that still require proof in Court. That the Court could consider the two sureties for whom no objection had been raised to consider the application positively.

The right to bail is guaranteed under Article **23[6][a] of the Constitution**. That right is founded on the principle that a person is presumed innocent until proven guilty by a competent court or, until such person voluntarily pleads guilty to the charge. In fact, the 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**. Therefore, the objections by counsel Peremba that the accused is faced with a serious crime which will disaffect him to return for trial, is a mere allegation and cannot override that important right.

The applicant presented no special circumstances for his release, save that he has made a previous attempt to be released on bail.

As I have said in numerous rulings before this, my primary concern is that the applicant will return to court to answer the charge if released. I noted the sureties presented and on the face of it, the credentials of the first two sureties are sound. They are close relatives of the applicant and the older brother should be able to prevail over him to appear whenever the trial is adjourned for hearing. I was not satisfied with Budhugo Kezekia the third surety. He does not seem to know the applicant well and has not lived with him for the last three years. For those reasons, I reject him.

That said, the power to grant or refuse bail remains with the Court which must be convinced on a high balance that all circumstances considered, the applicant will not abscond when released. As was held in **Uganda vrs. Col. [Rtd] Dr. Kiiza Besigye Constitutional Reference No. 20/2005**, a court should carefully exercise its judicial mind before depriving one of their liberty.

I have found Mr. Waiswa and Mr. Basoga to be substantial sureties. Beyond the sureties presented, the applicant has shown that he has a fixed place of abode in Matuba Village, Mayuge Parish, Imanyiro Sub County, Mayuge District within the jurisdiction of this Court. He has no other recorded pending charges or previous convictions.

I am persuaded that with those conditions in place, the applicant shall return to answer the charge. I accordingly allow the application and release the applicant on bail on the following conditions:-

1. Cash bail of Shs. 1,500,000 only.
2. Non cash bail against each one of his sureties to the tune of Shs. 3,000,000 only.
3. The applicant shall report to the Registrar of this Court on the 2nd day of each. month with effect from 2<sup>nd</sup> May, 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**

**25/4/19**