

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CRIMINAL DIVISION)**  
**HCT-00-CR-CM-0081-2020**

**1. NANKABIRWA JANE**  
**2. KALUMBA JOHN** .....**APPLICANTS**

**VERSUS**

**UGANDA** ..... **RESPONDENTS**

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

**RULING:**

The first Applicant Nankabirwa Jane Kulumba aged 53 years is a wife of Kulumba John, the second Applicant aged 53 years. Both represented by Katende, Ssempebwa & Co. Advocates who have by Notice of Motion made an application for Bail pending trial Under Section 14 and 15 of T.I.A and Articles 23 and 28 of the Constitution of the Republic of Uganda.

The two Applicants, a woman and her husband together with several others are indicted in a part heard murder case under Sections 188 and 189 of the Penal Code in High Court Criminal Session Case No. 122 of 2020. The trial started but was indefinitely adjourned due to prevailing restrictions of movement of prisoners from Luzira Government prisons to and from courts. I will now consider these two bail applications jointly.

The Applicants have pleaded not guilty and they are presumed innocent until they are proved guilty.

The Applicants are spouses of advanced age. Each is 53 years old and facing age related illness of diabetes and hypertension.

The two Applicants have a permanent place of abode at Mityana Galabi, Mityana Town Council, proved by affidavit of Kulumba John and annexure 'D' to Nankabirwa's affidavit, to wit a Land Title for the Matrimonial home at Minaana village, Galabi Mityana Central (Mityana Block 139 Plot 77 & 78).

Dr. Kakoraki Alex of Uganda Prisons Medical Services confirmed in a Medical Report dated 27/9/2019 that Kulumba John (2<sup>nd</sup> Applicant) suffers from chronic Diabetes and Hypertension. My view is that these are types of illnesses that are aggravatable by stress associated with imprisonment.

I have considered the State Attorney's submission that the Applicant has not proved that the illness can not be treated while in prison. In my view, each case must be considered on its facts. This is a man of advanced age, imprisoned together with his wife and son. The type of illness he suffers from is manageable with among other things appropriate feeding and easy access to frequent medical attention. I am unable to accept this state contention.

The record ground of objection is that the trial has started save that it was differed due to Corona Virus breakout.

This provided for under Section 14(1) of T.I.A that the High Court may at any stage in the proceedings release the Accused person on bail provided:-

- (a) The Court takes from him or her a recognizance consisting abode.
- (b) The Court is satisfied that the Accused person has substantial sureties.
- (c) The Court is satisfied that the Accused has a known place of abode where to be traced when required.
- (d) That he/she is not a danger to society or will interfere with fair trial.

Article 23(6) of the Constitution of Uganda permits every person at anytime, upon or after being charged may apply for release on bail, and the Court may at its discretion grant the application irrespective of the class of Criminal offence for which the person is charged.

I agree with the State submission that there has not been any inordinate delay in having the Applicants prosecuted. I am alive to the circumstances under which their trial was expedited on Orders of this Court. The Applicants filed their application for bail before they were

committed for trial. I Ordered stay of the Application for bail to allow the trial of substantive case's trial which, for the reasons given above has suffered inordinate delay. This can not be used against the Applicants because the inability to accord the Applicants a speedy and continuous trial is on the part of the Judiciary.

The two Applicants have proved to my satisfaction the following factors:-

- (a) The Applicants, Nankabirwa and Kulumba John are the persons of advanced age.
- (b) Each of the Applicants have grave medical conditions that are aggravatable by prison stressing conditions.
- (c) The Applicants are spouses with a permanent place of abode, their matrimonial home in Mityana Town Council.
- (d) The sureties presented have not been contested, they are substantial and are hereby approved.

Therefore, Bail pending trial is hereby granted on the following terms and conditions:-

**1. Nankabirwa Jane Kulumba, 53 years:-**

- (a) She is granted bail and shall execute a non cash bond of Ug. Shs. 50,000,000/= (Fifty Million Shillings).
- (b) Each of her sureties, namely;-
  - (i) Prosicovia Ssemenda of Mengo Hospital village LC.1.
  - (ii) Sabakaki James of Kawala Zone I LC.1.
  - (iii) Sserunkuma Frank Kiwanuka of Kitovu Cell, Local Council, Kitende, Kajansi Town Council shall execute a bond of Ug. Shs. 50,000,000/= (Fifty Million Shillings) Not Cash **per person**.
- (c) The Applicants shall report before the Deputy Registrar,  
  
Criminal Division for Bail extension once a month with effect from  
  
1<sup>st</sup> October 2020 until the main Criminal trial is concluded.

**2. Kulumba John, 53 years old.**

- (a) He is granted bail pending trial and he shall execute a bail bond of Ug. Shs. 50,000,000/= (Fifty Million Shillings) Not Cash.
- (b) Each of his approved sureties shall execute a non-cash bond of Ug. Shs. 50,000,000/= (Fifty Million shillings). These are:-
- (i) Lwanyage Nasir Abdul of Nakitokolo Cell, Kisozi Ward, Kyengera Town Council, Wakiso District.
  - (ii) Njuki Henry of Kyebando village LC.1, Wakiso District.
  - (iii) Lucy Kiwumulo Masiko of Kweeba Zone LC.1, Mutundwe Parish, Rubaga Division.
  - (iv) Kulumba John shall report and appear before the Deputy Registrar, Criminal Division for bail extension once a month at the beginning of each month with effect from 1<sup>st</sup> October 2020 until disposal of the main criminal case.

Dated this 7<sup>th</sup> day of **September 2020**.

J. W. Kwesiga

**Judge**

7<sup>th</sup> /9/2020

To be served on:-

1. Applicants C/o. Katende, Ssempebwa & Co. Advocates,

**Kampala.**

2. The Director of Public Prosecutions,  
**Kampala.**

J. W. Kwesiga