

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
HCT-00-CR-CM NO. 189 OF 2021
[ARISING OUT OF HCT-00- CR-CS-0361 OF 2020)

BENARD OKANYA=====APPLICANT

VERSUS

UGANDA=====RESPONDENT/PROSECUTOR

BEFORE HON. JUSTICE TADEO ASIIMWE

RULING

This is an application for bail pending trial and is brought by way of Notice of Motion under Article 23 (6) (a) of the Constitution, Section. 14 (1) and rule 2 of the Trial on Indictments Act Rules.

The applicant is indicted with 2 Counts of murder and Aggravated Robbery. The offences are alleged to have taken place on the 23rd, November 2019 at Comfort Lodge Ntinda.

The grounds of the application as presented and supported by the affidavit of the applicant are as follows;

1. That the applicant was charged with the above offences of murder c/s 188 and 189 of the penal code act and aggravated Robbery contrary to section 285 and 286 of the penal code Act on the 23rd day of November 2019.
2. That the applicant has a constitutional right to apply for bail.

3. That the applicant will not abscond if released on bail.
4. That the applicant has a fixed place of abode within the jurisdiction of this Honorable court at Kireka D wakiso District.
5. That the applicant has substantial sureties within the jurisdiction of this court who have undertaken to ensure the applicant's compliance with bail conditions.
6. That the applicant is a citizen of Uganda who is law abiding and has never been charged with any other criminal offence.
7. That it is in the interest of justice that this application be granted.

At hearing, the applicant was represented by counsel Henry Agaba While the respondent was represented by Nandawura Lilian a State attorney form ODPP.

The applicant's Counsel filed written submissions and made oral highlights of his submissions at the hearing while the respondents counsel made oral submissions. which I shall consider in this ruling.

In his submissions, counsel for the applicant relied on article 23 & 28 of the constitution arguing that the applicant is presumed innocent until proved guilty and has a right to apply for bail. That this court has discretion under section 14 &15 of the T.I.A to grant the accused person bail. That the applicant has a fixed place of abode at kajjansi wakiso District as per the introduction letter from LC 1.

On sureties, counsel submitted that the applicant has substantial sureties who are capable and willing to ensure that the applicant complies to the terms of bail if granted. The said sureties include Adipo Teopista aged 9, a resident of Kireka D, council I and mother of the applicant, Joyce Nyeko aged 58 years' resident of Sonde,

Kiwanga Mukono district, an aunt of the applicant and Ivan Odit Onapito aged 36, a resident of Kisasi, Nakara Division and a brother of the applicant.

In reply, the learned state attorney objected to the application for reasons that the applicant is indicted with 2 grave offences of murder and aggravated robbery and that that applicant is a student of Tean University and resides in Kireka and that the 2 sureties stay in a different area and cannot be in position to watch over him hence not substantial sureties.

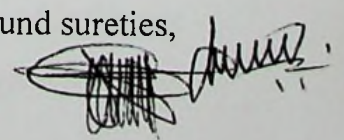
RESSOLUTION.

The rationale behind the grant of bail is in respect to upholding one's right to personal liberty. It is a constitutional right premised on the presumption of innocence as protected under Article 28 (3) of the Constitution of the Republic of Uganda.

"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."

A bail applicant must not be deprived of his/her freedom unnecessarily or as merely punishment where they have not been proved guilty by a competent court of law.

The Court have discretionary powers to grant bail under Section 14 (1) of the Trial on Indictments Act and the conditions under which bail is to be granted under Section 15. These circumstances are broken down to proof of exceptional circumstances like grave illness, a Certificate of no objection from the Director of Public Prosecution, infancy or advanced age; and the fact that the accused will not abscond to be proved by the accused having a fixed place of abode, sound sureties, among others.

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In this case, the state Attorney objected to the sureties arguing that they are not substantial for reasons that they do not stay in the area with the applicant. However, the evidence on record shows that the 1st surety (mother) stays in the same area or in the same place with the applicant except the last two sureties who stay in different places.

Besides, it is immaterial for sureties to reside in a different area with the applicant provided they are within the jurisdiction of court which is not in dispute in this matter.

Both the second and third sureties are in gainful employment with permanent addresses from where they can be traced. The said sureties have presented documents for proper identification and are close relatives of the applicant.

I am also aware that it not mandatory to prove exceptional circumstances for court to grant bail. It is therefore irrelevant that the applicant did not plead or prove the same.

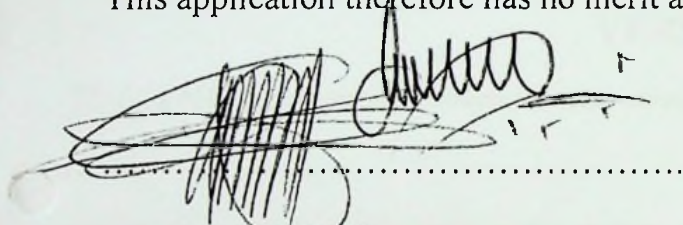
The applicant is presumed innocent until proven guilty, however I must note that the applicant's liberty does not lie in a vacuum. It must be weighed with the danger it poses to the Public in the criminal justice system.

In this case the applicant is indicted with 2 counts of serious offences which attract a maximum sentence of death. Murders of girlfriends in lodges and homes have become rampant and are of public concern. This poses danger to the applicant too if released without being tried first.

Further, the applicant being a university student, he has a wide scope of influence from colleagues and is a flight risk. The chances of abscondment are high if released.

In conclusion therefore, I find that although the applicant has a right to apply for bail, has sound sureties, has a fixed place of abode and this court has discretion to grant bail, for the earlier reasons given in this ruling, I shall exercise my discretion not to grant bail to the accused.

This application therefore has no merit and the same is here by dismissed.

A handwritten signature in black ink, appearing to be 'Tadeo Ashimwe', is written over a horizontal dotted line. The signature is stylized with loops and a large initial 'T'.

TADEO ASHMWE.

JUDGE

17/12/2021.