

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
HCT-00-CR-CM NO. 0063 OF 2021
[ARISING OUT OF HCT- CR. 0908- 2020)

BYABAGAMBI PATRICK=====APPLICANT

VERSUS

UGANDA=====RESPONDENT

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) and 28 (3) of the Constitution, S. 14 (1)(a) and 15 of the Trial on Indictments Act and rule 2 of the Judicature (Criminal Procedure) (Applications) Rules S.I. 13-8.

The applicant is indicted with the offence of Aggravated Robbery contrary to section 285 and 286 of the penal code Act.

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

1. That the applicant is presumed innocent and will not abscond once released on bail.
2. That the applicant has a fixed place of abode within the jurisdiction of this honorable court.
3. That the applicant has substantial and dependable sureties who are ready and willing to ensure he returns to court to face his trial as and when required.

4. That there are no further charges pending against the applicant.
5. That this court has power to grant him bail.
6. That it is just and fair that this application is allowed and the applicant be released on bail.

At the hearing, the applicant was represented by counsel Evans Tusiime While the respondent was represented by Njuki Mariam, a State attorney from ODPP. Counsel for the applicant relied on the written submission filed on 25/03/2021 and made oral highlights of his submissions and introduced sureties with leave of court while the respondents counsel made oral submissions which I shall consider in this ruling.

In his submissions, counsel for the applicant argued that the applicant is innocent and is entitled to a speedy trial. That the applicant committed on 25/10/2020 and no trial has commenced. That the applicant has a fixed place of abode within the jurisdiction of this court and will not abscond. That his client suffers from Hepatitis B and bronchitis which has greatly compromised his health while in prison. That court has powers under section 14 of the T.I.A to grant the accused person bail in its discretion and that it is not mandatory to prove exceptional circumstances.

On sureties, he submitted that the applicant has substantial sureties viz- Mugenyi John an uncle to the applicant, Katunguka Gabriel an elder brother and Kiiza Mary an auntie who have undertaken to fulfill their duties as sureties if the accused person is granted bail by this court.

In reply, the learned state attorney opposed the application arguing that the applicant is charged with a grave offence of aggravated robbery which attracts a maximum sentence of death and that the applicant has not proved exceptional circumstances. She did not object to the sureties as presented but invited court to exercise its discretion against the applicant by rejecting his bail application.

In rejoinder the applicants counsel argued that this court has discretion to grant bail the gravity of the offence notwithstanding since it does not take away the innocence of the applicant.

RESSOLUTION.

The rationale behind the grant of bail is in respect to upholding one's right to personal liberty. This is derived from the cardinal principle of the presumption of innocence as enshrined under Article 28 (3) of the Constitution of the Republic of Uganda. This principle was emphasized in the case of **Abindi Ronald and Anor v Uganda Miscellaneous Criminal Application No. 0020 of 2016**.

“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.”

Therefore, 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.

This principle of protection of personal liberty was further cemented in the case of **Col (Rtd) Dr. Kizza Besigye v Uganda Criminal Application No.83 of 2016** wherein court stated that court has to consider and balance the rights of the individual, particularly with regard personal liberty...”

The Court's discretionary powers to grant bail are enshrined 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

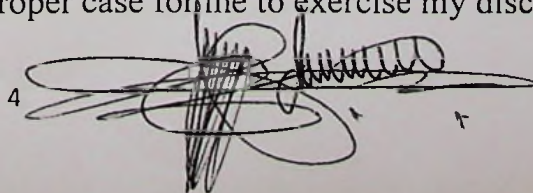
Public Prosecution, infancy or advanced age; and the fact that the accused will not abscond to be proved by the accused having a fixed place of abode, sound sureties, among others. However, proof of exceptional circumstances is not mandatory requirement as courts have the discretion to grant bail even when the exceptional circumstances have not been proved.

Therefore, Court is not mandatorily supposed to grant bail on the basis of proof of exceptional circumstances alone although desirable. The discretion depends on the circumstances of the case. This was the position in the case of **Ssemanda Alex Button vs Uganda Criminal application no 157 of 1999**. Where justice **Egonda Ntende** held that section 14A of the TID which is now (S.15 TIA) is not mandatory barring consideration of release on bail of an accused where no exceptional circumstances have not been shown. The discretion is left with the court to determine whether in the circumstances of that case exceptional circumstances would be required for consideration of the release of the accused on bail.

In the case of **Abindi Ronald and Anor v Uganda** was it was held among others that "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."

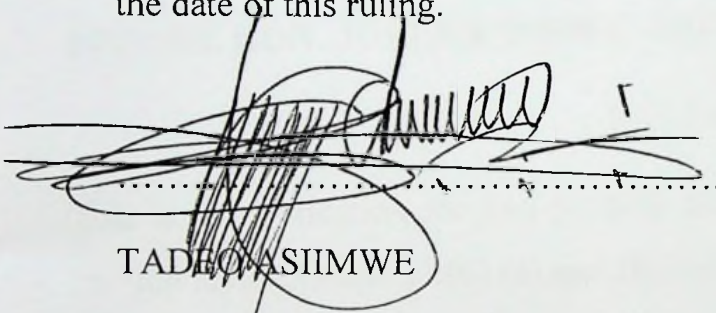
In this application, the state Attorney did not object to the sureties. This court finds them substantial. I am convinced that the 3 sureties presented will monitor the accused and ensure that he complies with his bail conditions.

In this case, the applicant has a fixed place of abode within the jurisdiction of this court and the sureties are substantial. The circumstances surrounding commission of the offence were not cruel. I find this a proper case for me to exercise my discretion

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in favor of the applicant. For the above reasons I find merit in this application and the same is hereby allowed with the following order.

1. The applicant shall deposit a sum of 1,000,000/- (one million) cash.
2. Each of the Three sureties to be bound in the sums of UGX 20,000,000/- (twenty Million) not cash.
3. If the above 2 terms are fulfilled, the applicant shall be released and he will be required to report to the Registrar of the Criminal Division once every month from the date of this ruling.

A handwritten signature in black ink, appearing to read 'TADEO ASIIMWE', is written over a horizontal dotted line. The signature is stylized with loops and flourishes.

JUDGE

27/04/2021