

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**HCT-00-CR-CM NO. 0044 OF 2021**

**(ARISING OUT OF kasangati crim. case no. 58 of2020)**

**KAVUMA ABDUL=====APPLICANT/ACCUSED**

**VERSUS**

**UGANDA=====RESPONDENT/PROSECUTOR**

**BEFORE HON. JUSTICE TADEO ASIIMWE**

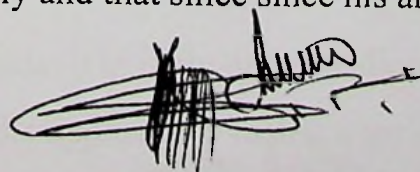
**RULLING**

This is an application for bail pending trial and is brought by way of Notice of Motion under Articles 23 (6)(a) 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 (2) 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 was arrested and charged with aggravated robbery at Kasangati Court and Remanded.
2. That the applicant has not been committed to the high court for trial.
3. That the applicant is a sole fender of the family and that since since his arrest the family has suffered dire poverty.

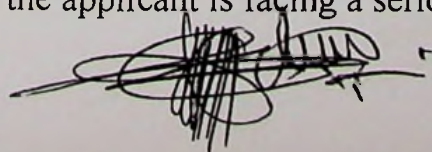


4. That he intends to undertake specialized treatment which is not capable of being provided by the prison Authorities.
5. That the applicant has a fixed place of a bode within the jurisdiction of this honorable court.
6. That the applicant has substantial and dependable sureties who are ready and willing to ensure he returns to court to face his trial as and when required
7. That this court has power and discretion to grant him bail since the offence is bailable.
8. 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 Twinomugisha Daniel While the respondent was represented by Njuki Mariam State attorney form ODPP. Counsel for the applicant made written submission filled on 25/02/2021 and made oral highlights of his submissions while the respondents counsel made oral submissions which I shall consider in this ruling.

In his submissions, counsel for the applicant argued at length on the law relating to grant of bail and the conditions which must be satisfied. He quoted articles 23 & 28 of the constitution, sections 14 & 15 of the T.I.A arguing that the applicant should be granted bail at the discretion of court which should be exercised without any malice, ill will, ulterior Motives or external influence. He further submitted that the applicant has no prior conviction with a fixed place of a bode within the jurisdiction of this court. That the applicant is no threat to any process and is willing to abide by the terms and conditions set. That the applicant also has substantial sureties who are willing to ensure compliance with bail conditions

In reply, the learned state attorney did not file any affidavit in reply but was allowed to submit only on points of law. She submitted that the applicant is facing a serious





offence whose maximum sentence is death. She invited court to deny the applicant bail. In rejoinder the applicants counsel argued that the offence is bailable and therefore the seriousness of the offence is immaterial since the applicant is still innocent.

### **RESOLUTION.**

Bail as a constitutional right is based on the presumption of innocence as provided under Article 28 (3) of the Constitution of the Republic of Uganda. This 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.”

An accused person 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, it is trite law that 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.

Court is not mandatorily supposed to grant bail on the basis of proof of exceptional circumstances. 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** it was held 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 opposed the application basing on the seriousness of the offence but did not object to the sureties presented.

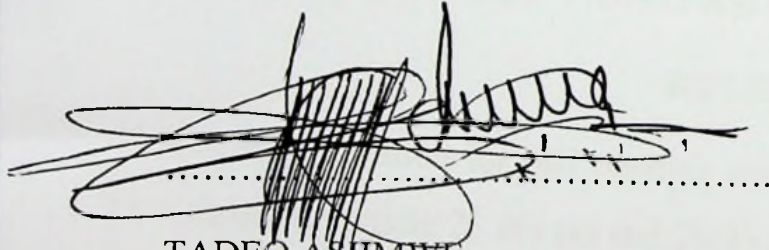
In the absence of an objection from the respondent, I am convinced that the applicant sureties are substantial and will monitor the accused and ensure compliance with his bail conditions.

In this application, the applicant has a fixed place of abode within the jurisdiction of this court, and the sureties are substantial. Further the applicant has not been committed for trial for period of 8 months. No reason has been advanced by the respondent for their failure to commit the applicant. This delay can only be interpreted to be still gathering evidence. I therefore find that this is a proper case



for me to exercise my discretion in favor of the applicant. For the above reasons, I find merit in this application and the same is hereby allowed with the following orders.

1. The applicant shall pay a sum of UGX 5,000,000/- (five million) cash.
2. Each of the two sureties (Namaku Magindu & Nalumansi Kamida) are also to be bound in the sums of UGX 20,000,000/- (twenty Million) not cash.
3. If the above 2 conditions are fulfilled, the applicant shall be released on bail and he shall report to the Registrar of the Criminal Division once every month from the date of this ruling.



TADEO ASHIMWE

JUDGE

1 9/04/2021