

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
HCT-00-CR-CM NO. 72 OF 2021

[ARISING OUT OF HCT-00-CR-SC-023 OF 2018

KIZZA EMMANUEL=====APPLICANT/ACCUSED

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) and 28(3)(a) of the Constitution, S. 14 (1) 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 Defilement contrary to section 129(4)(b) 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 stands charged with the offence of Aggravated defilement contrary to section 129(4)(a) and committed to the high court in April 2019 without hearing to date.
2. That the applicant is aged 65years and suffering from HIV and Hemorrhoid

3. That he is a widower and looks after his children.
4. The applicant has a fixed place of abode within the jurisdiction of this honorable court and he is willing to abide by any bail conditions that may be imposed upon him by the honorable court and will not abscond.
5. That the applicant has no other pending charges against him in any other court.
6. That the applicant has substantial sureties, all resident within the jurisdiction of this honorable court which sureties are ready to stand for him and shall be produced during the hearing of this application.
7. That it is in the interest of justice that the applicant be granted bail.

At hearing, the applicant was represented by counsel ssegwanyi Saaka While the respondent was represented by Aduti Timothy a State attorney from ODPP. Counsel for the applicant made written submission 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 cited articles 23 and 28 of the constitution and argued that the applicant is still innocent with a right to apply for bail and this court has powers and discretion under section 14 & 15 of the T.I.A to grant the accused person bail. That the offence the applicant is charged with is a bailable and the applicant has a fixed place of abode at kelezia zone Wabigalo parish Makindye division, Kampala and he is willing to abide by any bail conditions that may be imposed upon him by this honorable court. That the said residence is not rented but family property where he resides with others which is not disputed.

On sureties, counsel submitted that the applicant has 3 sound sureties with proper identification who also reside within the jurisdiction of this court.

In reply, the learned state attorney objected to the application for reasons that the applicant has not proved any exceptional circumstances to meet the conditions under the law. That the sureties presented did not know their roles and repercussions in the event the accused absconds from court hence not suitable. That since the accused has been committed with a serious offence and knows all the evidence against him, he is likely to run away if released considering the severity of the likely sentence. In conclusion, counsel prayed for dismissal of the application and fix the case for hearing.

RESSOLUTION.

Bail is a constitutional right premised on the presumption of innocence as protected 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.”

The rationale behind the grant of bail is in respect to upholding one’s right to personal liberty.

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.

It is now the 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. This was emphasized in **Abindi Ronald and Anor v Uganda** where court stated 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 objected to the application on the basis that the applicant is likely to abscond for lack of suitable sureties and place of abode.

In this case, the residence of the applicant is well explained with proper address and it can be easily traced.

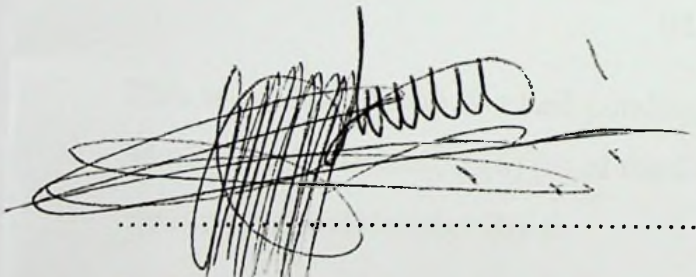
I am in agreement with the applicant's counsel that the applicant's residence / fixed place of abode was proved. All the 3 sureties as presented are substantial in my view and will be able to ensure compliance with terms and conditions set by court.

Further, although aggravated defilement is a serious offence and attracts a maximum sentence of death, the circumstances of this case do not justify continued detention of the applicant. The applicant has been on remand for over 3 years waiting for trial.

In conclusion, I find that the applicant has satisfied court that he should be granted bail since he has presented 3 sureties which this court finds to be substantial. In

addition to my earlier reasons, I shall exercise my discretion by granting bail to the accused person on the following conditions;

1. The applicant shall pay cash bail of shs 1,000,000/= (one million only).
2. Each of the 3 sureties is bound in the sum of shs 50,000,000/= (fifty Million only) not cash. If the above conditions are fulfilled, the applicant shall be released and start reporting to the Deputy Registrar of this Court once every month with effect from the release date.

A handwritten signature in black ink, consisting of a series of loops and strokes, positioned above a dotted line.

TADEO ASIIMWE

JUDGE

17/12/2021