

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

**HCT-00-CR-CM NO. 13 OF 2021**

**[ARISING OUT OF NAB- COURT CASE NO. 34 OF 2019) &HCT-00-CR-  
SC-0167 OF 2020**

**LOBOKA ABRAHAM AUGUSTINE=====APPLICANT/ACCUSED**

**VERSUS**

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

**BEFORE HON. JUSTICE TADEO ASIMWE**

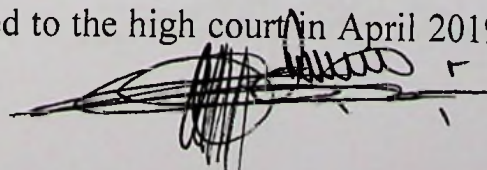
**RULING**

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;

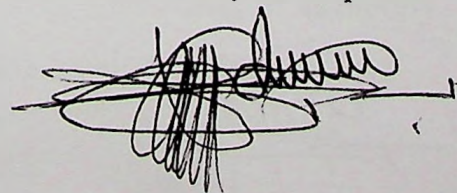
1. That the applicant stands charged with the offence of Aggravated defilement contrary to section 129(4)(a) and committed to the high court in April 2019 without hearing to date.



2. That the applicant is aged 65 years 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 a bode 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 Steven Nelson and While the respondent was represented by Njuki Mariam a State attorney form 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 argued that court has powers and discretion under section 14 & 15 of the T.I.A to grant the accused person bail. That the applicant is presumed innocent under the constitution and has a right to apply for bail. That the offence the applicant is charged with is aailable and is not sure of his trial yet he is of advanced age of 70 years and is suffering, has a fixed place of abode in kawempe and he is willing to abide by any bail conditions that may be imposed upon him by this honorable court.

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On sureties, counsel submitted that the applicant has 2 sound sureties with proper identification viz Dima James a friend and a resident of Kirija Village, adjumani district and Yuma Simon Loboka and uncle and a resident of Obongi District.

In reply, the learned state attorney objected to the application for reasons that the applicant is stated to be a suddannes refugee residing in kawempe but no such evidence of refugee status was led in court and no evidence of his residence was produced. that the applicant told court that he resides in Obongi District, raising more confusion as to his actual place of residence. That his delayed trial is attributed to covid 19 situation and should not be blamed on the ODPP. That although the applicant qualifies to be of advanced age, he is related to the victim and if released is likely to interfere with the witnesses including the victim.

#### **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.

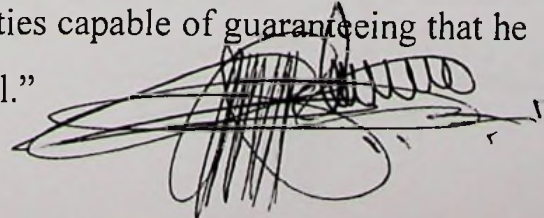
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This principle of protection of personal liberty was further cemented in the case of Col (Rtd) Dr. Kizza Besigye v Uganda Criminal Application No.83 of 2016 wherein court stated that court has to consider and balance the rights of the individual, particularly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

In this case counsel for the applicant submitted that the applicant is HIV positive and is of advanced age warranting his released on bail based on exceptional circumstances proved by the applicant. However, the applicants did not present to court with such proof of the applicant’s HIV status report and or birth certificate to prove his actual age. Even if he had led such evidence of his health status to the satisfaction of court, he would still be required to prove that the prison medical facilities are incapable of treating/managing HIV. Unfortunately, no such proof/evidence was led in this court.

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. 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 a refugee without documents and a relative of the victim who is likely to interfere with the witnesses.

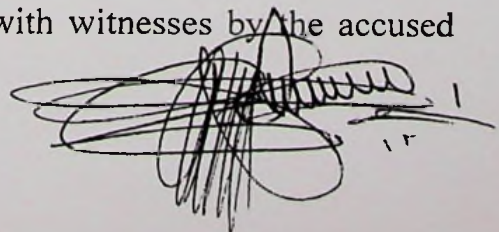
Further that the residence of the applicant is in question as it is stated to be kawempe in kampala and also in Obongi District.

I am in agreement with the learned state attorney as regards the refugee status of the applicant and his confusing place of residence. The applicant in his affidavit in support of the application stated that he is a resident of kawempe kampala district. Upon cross examination in court, he stated that he is resident of obongi District. Therefore, this court remains in doubt as to his actual place of residence.

In addition to the above, the applicant is also stated to be a suddannes refugee with out documents. Therefore, his movements with in Uganda cannot be controlled if released on bail without clear place of residence. Therefore, the ground of fixed place of a bode within the jurisdiction this court has not been approved.

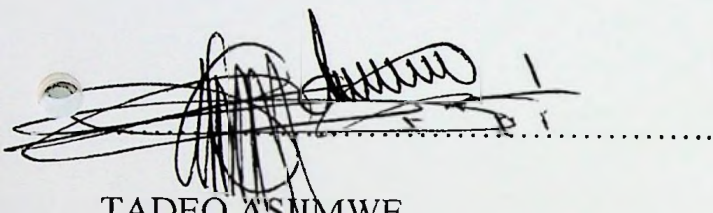
As regards sureties, it is clear that both are residents of Adjumani and Obongi districts respectively outside the jurisdiction of this court. Keeping in mind that the applicants place of a bode is doubttable and rather confusing, this court is not convinced that the sureties presented will be able to ensure compliance with terms of court.

Further, aggravated defilement is a serious offence and attracts a maximum sentence of death. The applicant is an uncle of the victim and could easily manipulate/intimidate her. I am hesitant to grant bail in matters involving family members of the same house hold in order to avoid interfering with witnesses by the accused person and endangering victims.

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In conclusion, I find that although the applicant has a right to apply for bail and this court has discretion to grant the same, the sureties presented are not substantial. In addition to my earlier reasons, I shall exercise my discretion by not granting bail to the accused.

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

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TADEO ASIMWE

JUDGE

8/04/2021