

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**HCT-00-CR-CM NO. 0029 OF 2021**  
**(ARISING OUT OF crim. session 0699 of 2019)**

**LUSWAABI HERBERT=====APPLICANT/ACCUSED**

**VERSUS**

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

**BEFORE HON. JUSTICE TADEO ASIIMWE**

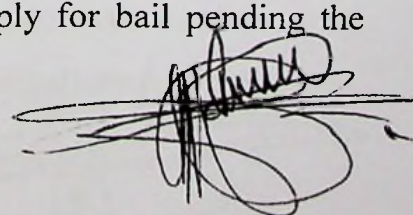
**RULLING**

This is an application for bail pending trial and is brought by way of Notice of Motion under Article 23 (6) (a) of the Constitution, S. 14 (1) & 15 of the Trial on Indictments Act and rule 2 and 4 of the Judicature (Criminal Procedure) (Applications) Rules S.I. 13-8.

The applicant was charged with the offence of Aggravated defilement contrary to section 129(3) (4 (a) of the penal code Act.

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

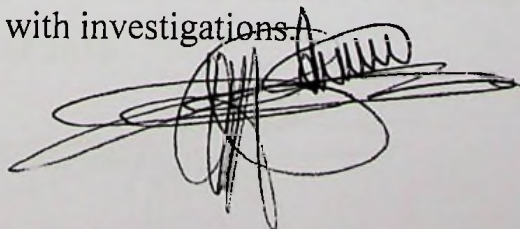
1. It is the constitutional right of the applicant to apply for bail pending the hearing of this trial.



2. That the applicant has a fixed place of a bode within the jurisdiction of this honourable court.
3. That the applicant has substantantive and suitable sureties who are ready and willing to ensure he returns to court to face his trial as and when required.
4. That it is in the interest of justice that this honourable court exercises its discretion to grant bail to the applicant without proving exceptional circumstances.

At hearing, the applicant was represented by counsel Senkumi Nicholas while the respondent was represented by Timothy Amerit, State attorney form ODPP. Both counsel made written submission and only made oral clarifications of their submissions which I shall consider in this ruling.

In his submissions, counsel for the applicant argued that the applicant has a right to apply for bail under articles 23 of the constitution. That the said right is premised under the presumption of innocence. That fundamental rights as per article 20 are inherent and not granted by the state. That court has powers under section 14 of the T.I.A to grant the accused person bail. That the applicant is presumed innocent and should not be unnecessarily deprived of his liberty before the trial is determined. He further submitted citing the case of foundation for human rights initiative versus AG that has discretion to grant bail on certain conditions. That proof of exceptional circumstances is not a mandatory requirement and that his client has not been tried since 2019. That if released he will not interfere with investigations.

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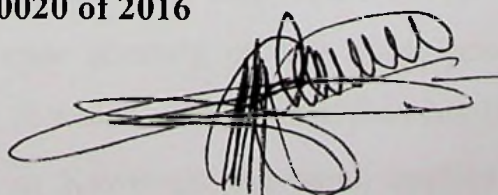
He submitted that the applicant has a fixed place of abode at Mulago 1 Butaka Bikira village Kawempe Kampala District within the jurisdiction of this court and will not abscond.

On sureties, he submitted that the applicant has substantial sureties viz- Asaba Teopista, mother of the applicant a resident of Butaka Bukira village Mulago Kawempe Division Kampala. The second surety is Nyiramusha Rhoda, a cousin to the applicant a resident of Butaka Mulago Kawempe Kampala District. That both sureties have undertaken to fulfill their duties.

In reply, the learned state attorney objected to this application on grounds that the applicant has not brought evidence to prove his actual residence. The LC letter does not show whether he has a home or is a tenant to prove his fixed place of abode. That the applicant has not proved exceptional circumstances. He invited the court to balance the interest of the applicant with the need to protect victims of crime, the interest of the public and the administration of justice. He finally prayed that the court exercise its discretion by dismissing this application.

#### RESOLUTION.

The position of the law as highlighted by the applicant's counsel is the correct one. This court has discretion to grant or not to grant bail depending on the circumstances of each case. The rationale behind the grant of bail is in respect to upholding one's right to personal liberty. This is especially the product of 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**

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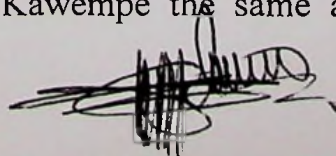
“Under Article 28 (3) of the Constitution of the Republic of Uganda, every person is presumed innocent until proved guilty or pleads guilty. Consequently, an accused person should not be kept on remand unnecessarily before trial.”

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.

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.

In this application, the state Attorney objected to the application on the basis that the applicant has not proved his fixed place of abode and the sureties did not prove their correct residencies. I do not agree with state attorney on this submission. The applicant attached an LC letter, annexure A which clearly describes his place of residence to be Butaka Bukirwa village in Kawempe the same applies to the

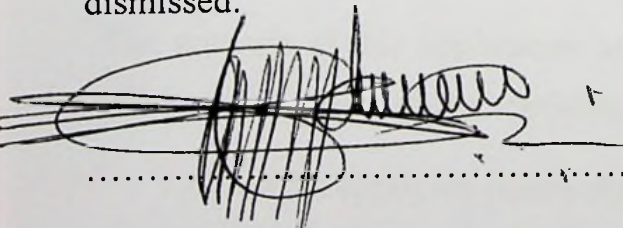




applicants. it does not matter whether they are tenants or own homes. What is necessary is to clearly describe where one's residence is located which has been done in this application.

In my view of the above, the applicant has proved he has a place of abode within the jurisdiction of this court and the sureties are substantial. I am convinced that they will be able to monitor the accused and ensure that he complies with his bail conditions if the applicant is released. However, in this case, although the applicant has a fixed place of abode within the jurisdiction of this court and has substantial sureties, I am not convinced that the applicant will not interfere with witnesses. The victim and the eye witnesses stay in the same village as neighbours. The victim was 6 years old at the time. There are high chances that these witnesses will be influenced not to come to court. Further the applicant was charged with a serious offence of aggravated defilement whose maximum sentence is death. The circumstances surrounding the commission of the offence are clear that all parties reside in the same location. I am weary of the safety of the witnesses. Balancing all interests, i do not think this is a proper case for me to exercise my discretion in favor of the applicant.

For the above reasons I find no merit in this application and the same is hereby dismissed.



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TADEO ASIIMWE

JUDGE

3/05/2021