

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
HCT-00-CR-CM NO. 0067 OF 2021
[ARISING OUT OF HCT-00-CR-SC-0712 OF 2020

MULINDWA MUSA=====APPLICANT/ACCUSED

VERSUS

UGANDA=====RESPONDENT/PROSECUTOR

BEFORE HON. JUSTICE TADEO ASIIMWE

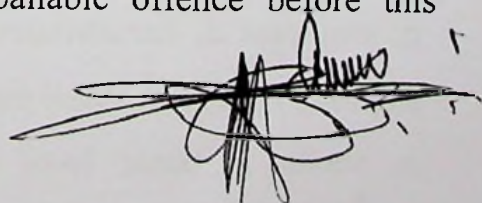
RULING

This is an application for bail pending trial and is brought by way of Notice of Motion under Article 23 (6) (a) of the Constitution, S. 14 (1&2) of the Trial on Indictments Act.

The applicant is indicted with the offence of Aggravated Defilement contrary to section 129(4)(b) of the penal code Act. The application was supported by the affidavit of Mulindwa Musa, the applicant Dated 9/03/2021.

The grounds of this application as presented are contained in the motion and the affidavit in support of the application but briefly are as follows;

1. That the applicant stands charged with the offence of Aggravated defilement contrary to section 129(4)(a) which is a bailable offence before this honourable court.



2. The applicant and his sureties have a fixed place of a bode within the jurisdiction of this honorable court and they are all willing to abide by any bail conditions that may be imposed upon him by the honorable court and will not abscond.
3. That the applicant is not in position to interfere with investigations, which in any case are now complete.
4. That bail is a constitutional right to be enjoyed by all those who qualify.
5. That the case against the applicant is weak and the applicant is likely to succeed if afforded freedom and facilities to prepare his defence.

The respondent opposed this application relying on the affidavit of Nakato Lydia dated 19/04/2021 wherein she stated that although the applicant has a constitutional right to apply for bail, the right to bail is not automatic. That prosecution is ready and willing to have the matter prosecuted if it is fixed by court. She finally stated that the applicant faces a grave offence which carries a maximum sentence of death and that if the applicant is granted bail, he is likely to abscond.

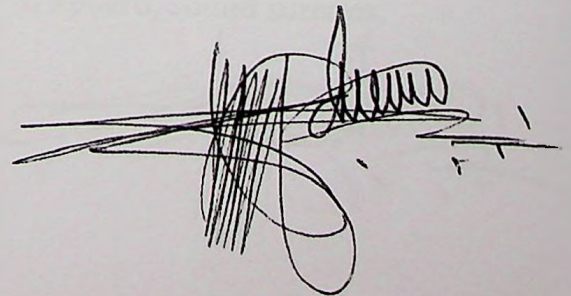
At hearing, the applicant was represented by counsel Unice Nabafu and While the respondent was represented by Shallote Nanziri a State attorney form ODPP.

Both counsel made written submission and made oral highlights of their submissions, which I shall consider in this ruling.

In his submissions, counsel for the applicant argued that under article 28 of the constitution, an accused is presumed to be innocent until proven guilty or until he pleads guilty and that it would be unfair in certain circumstances to keep him in prison without trial. She further argued that the applicant needs time to prepare his defence out of prison. That the applicant has a fixed place of abode at Najanankubi, Namuli Zone, Makindye Sabagabo division, kampala district within the

jurisdiction of this court as per the LC introductory letter. That the applicant has substantial sureties to wit, Yudaya Mwajje aged 61-year-old who is a biological mother of the applicant residing in the same place, Mugisha Muninu 47-year-old residing in the same place and an elder brother, miss Nakawuka Marry aged 59 years, an Aunt to the applicant and a resident of the same place. That all the three sureties understand their responsibilities as sureties if the applicant is granted bail. She invited court to find the sureties substantial. That it is certain when the applicant will be tried since nothing has taken place since his committal to the high court. She finally cited the cases of Kanyamunyu Mathew vs Uganda criminal cse no. 177 of 2017 and DR. Kizza Besigye vs Uganda criminal MA no 228 of 2005 stating that this court has discretion to grant bail in order to ensure liberty of an individual and that bail is a quest for liberty. He invited court to exercise its discretion in the applicants favour and grant him bail.

In reply, the learned state attorney agreed with the applicants as regards to cited provisions of the law relating to bail but argued that it is not mandatory to grant bail even when conditions are fulfilled. She objected to the application for reasons that the applicant is charged applicant is charged with a grave offence whose maximum sentence is death and if granted bail, he is likely to abscond. That court should take in to account the seriousness of the offence while granting bail to accused persons. She finally prayed that court declines to grant bail and fix the case for hearing since prosecution is ready. In the alternative she prayed for stringent conditions if court is to grant bail to the accused person.

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RESSOLUTION.

This court agrees with both parties that bail is a constitutional right and is premised on the presumption of innocence as protected under Article 28 (3) of the Constitution of the Republic of Uganda.

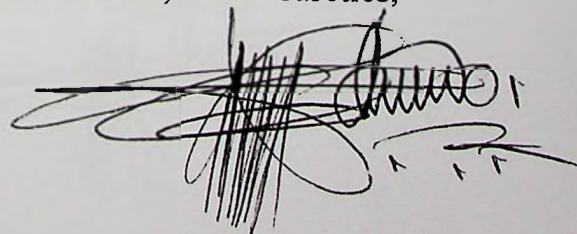
“Under Article 28 (3) of the Constitution of the Republic of Uganda, every person is presumed innocent until proved guilty or pleads guilty. Consequently, an accused person should not be kept on remand unnecessarily before trial.”

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.

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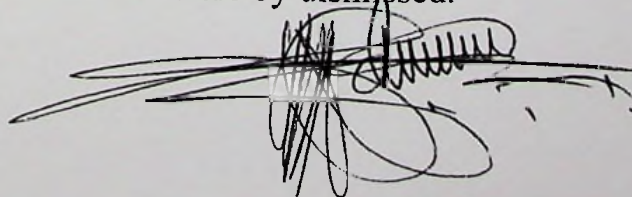
However, this court has earlier held that proof of exceptional circumstances is not mandatory requirement as courts have the discretion to grant bail even when the exceptional circumstances have not been proved. Further in the case of **Abindi Ronald and Anor v Uganda**, it was held that “An applicant 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.”

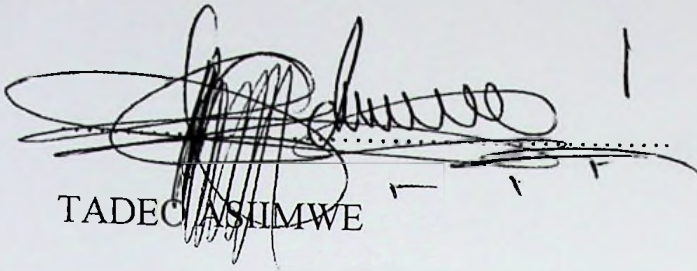
In this application, the state Attorney objected to the application on the basis that the applicant faces a grave offence whose maximum sentence is death and is likely to abscond if granted bail and that the applicant is likely to interfere with the witnesses.

This court is in agreement with the state submission that aggravated defilement is a serious offence and attracts a maximum sentence of death. The applicant is an adult aged 30 years and the victim is a minor aged 8. The age difference between the 2 is 22 years. They both stay in the same village. The victim is quite young and is prone to intimidation and or threat from adults including the applicant. There is a high likelihood of interfering with such young witnesses by the accused person and endangering victims. I do not find this matter to be a proper case for which i should exercise discretion in favour of the applicant.

In conclusion, I find that although the applicant has a right to apply for bail and this court has discretion to grant the same upon presentation of substantial sureties, for the reasons already stated in this ruling, this is not a fit and proper case for grant of bail. I shall therefore exercise my discretion by not granting bail to the accused.

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

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TADEC ASIMWE

JUDGE

03/05/2021