

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
HCT- 00-CR-CM-0078 OF 2021
[ARISING OUT OF CRIMINAL SESSION CASE NO. 42/2018.
MUSISI STEVEN=====APPLICANT/ACCUSED

VERSUS

UGANDA=====RESPONDENT/PROSECUTOR
BEFORE HON. JUSTICE TADEO ASIIMWE

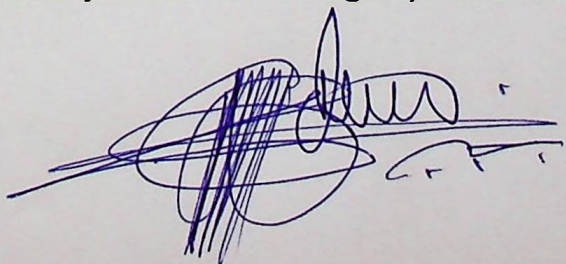
RULLING.

This application is brought by way of Notice of Motion under Article 23 (6) (a), article 28(3)(a) & 44(c) of the Constitution, S. 14 (1) ,15(1) & S4 of the Trial on Indictments Act and rule 2 & 4 of the Judicature (Criminal Procedure) (Applications) Rules S.I. 13-8.

The applicant is indicted for the Murder of Mugabe Vincent which is alleged to have occurred at Ziobwe, Luwero District on the 4th day of May 2018.

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

1. That the Applicant and 10 others were charged with murder contrary to section 187 & 188 of the penal code act on 10th may 2018 at luwero court.
2. That the charges against 8 of the co-accused were dropped by the DPP & the applicant with 2 co-accused were committed to high court for trial before honorable justice Ann Mugenyi Bitature in December 2020.

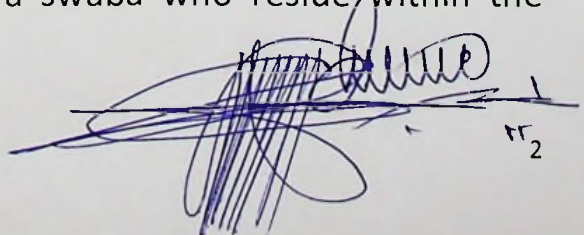


3. That the applicants trial was not completed and the case was adjourned to the next convenient session leading to further remand of the applicant.
4. That the offence with which the applicant is charged is bailable by this honorable court.
5. That the Applicant has a permanent place of abode at Kiyiya Village, Ziobwe sub- county, Luwero District within the jurisdiction of this court.
6. That the Applicant has substantial sureties within the jurisdiction of this court to ensure compliance with bail conditions.
7. That the applicant is willing to obey the conditions set by this honorable court pending hearing and determination of the main criminal case.

The application was opposed by DPP through an affidavit Kyomugisha Barbra a state attorney dated 14th may 2021.

At the hearing, the applicant was represented by Mamawi Bill while the respondent was represented by Apolot Joy a State Attorney. Both counsel filed written submissions in respect of their respective cases and made highlights on the hearing day.

Counsel for the Applicant contended that exceptional circumstances warranting release of the applicant exist since the applicant is of advanced age of 54 years. He cited the case of John Kashaka Muhanguzi vs Uganda CA criminal Appeal no. 797/2014 where court held that 50 years was advanced age. He further argued that the applicant is a responsible person an LC1 chairman who will not abscond if released on bail. That the applicant has been on remand for a long time since 2018. He further argued that the applicant has sound sureties to wit-Namatovu rose, specioza Nansubuga and Lumara swaba who reside within the jurisdiction of this court.



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On the other hand, the state attorney argued that the applicant is charged with a serious offence of murder, has not proved his proof of residence and that the sureties are not substantial. That the trial of the case has already started and 3 witnesses have so far testified. That it is in the interest of time that the matter be fixed to resume hearing.

Having listened to the arguments of both parties and in consideration of the evidence provided there to, I have come to the following conclusion;

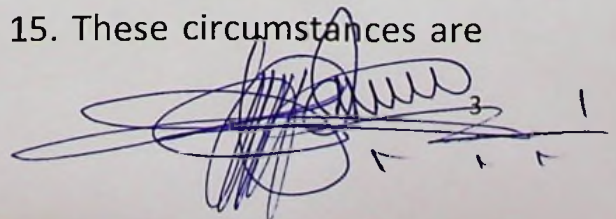
The legal essence behind bail is in respect to upholding one's right to personal liberty. This is especially the product of the presumption of innocence as protected under Article 28 (3) of the Constitution of the Republic of Uganda.

An 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 held that court has to consider and balance the rights of the individual, particularly with regard personal liberty..."

Further in the case of **Abindi Ronald and Anor v Uganda Miscellaneous Criminal Application No. 0020 of 2016** where it was held that;

"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 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 as courts have the discretion to grant bail even where none is proved.

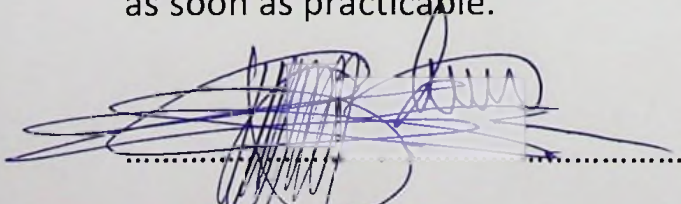
In the instant case the applicant presented sureties who in the normal circumstances would be substantial. However, the applicant being an LC1 chairperson, he cannot be controlled by people who are not his supervisors in the LC administration Authority. In my view persons above him in power like LC2, LC3, LC5 Chairpersons would be better placed to stand surety for the applicant.

In addition, the applicant's trial has already started and 3 witnesses are on record. Therefore, the issue of over detention without trial does not arise in the circumstances. The best option would be to ensure that the trial is complete rather than an interim remedy of bail.

I therefore find no merit in this application and the same is dismissed. The applicant is not granted bail.

ORDER;

The main case against the applicant should be fixed for further hearing as soon as practicable.

A handwritten signature in blue ink, appearing to read 'Tadeo Asiimwe', is written over a horizontal dotted line. The signature is stylized and somewhat messy.

TADEO ASIIMWE

JUDGE

11th November 2021