

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
HCT-00-CR-CM NO. 88 OF 2021
[ARISING OUT OF KRA-0012 OF 2020)

MUTEBI CHRISTOPHER=====APPLICANT

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), 28(3) and 139 of the Constitution, s. 40(2) S. 14 (1) & S.15(1,2,3) of the Trial on Indictments Act Rule 2 CPR.

The applicant is indicted with 3 Counts of murder, Aggravated Robbery and conspiracy to commit a felony. The offences are alleged to have taken place on the 2nd, November 2020.

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

1. That the applicant was charged with the above offences on the 18th day off march 2021.
2. That the applicant has a constitutional right to apply for bail and that this court has discretion to grant the same.
3. That the applicant is presumed innocent and strongly believes that the charges are a fabrication intended to embarrass him.

4. That there exist exceptional circumstances based on his grave illness justifying release on bail.
5. That the applicant will not abscond if released on bail.
6. That the applicant has a fixed place of abode within the jurisdiction of this Honorable court at Kajjansi, Kitende, Wakiso District.
7. That there are no other pending charges against the applicant
8. That the applicant has substantial sureties who have undertaken to ensure the applicant's compliance with bail conditions.

At hearing, the applicant was represented by counsel Etuku Gerald While the respondent was represented by Apoloti Joy a State attorney form ODPP.

Both Counsel filed written submissions and made oral highlights of their submissions which I shall consider in this ruling.

In his submissions, counsel for the applicant relied on article 23,28 and 130 of the constitution arguing that the applicant has a right to apply for bail and that this court has discretion under section 14 &15 of the T.I.A to grant the accused person bail.

She relied on the applicant's affidavit and arguing that his client was tortured upon arrest and has a broken arm which amounts to exceptional circumstances justifying his release on bail. He argued in alternative that it is not mandatory for an applicant to prove exceptional circumstances relying on decided cases.

That the applicant has a fixed place of abode at kajjansi wakiso District as per the introduction letter from LC 1.

On sureties, counsel submitted that the applicant has substantial sureties who are capable and willing to ensure that the applicant complies to the terms of bail if granted. The said sureties include Nalutaya Magret a biological mother of the

applicant, resident of Kajjansi, Wakiso District and Bugembe Ali, a friend of the applicant and resident of Kisenyi 2 Kampala District.

In reply, the learned state attorney objected to the application for reasons that the sureties did not attach proof of their residence to the application. In her view the sureties should have produced a land title or a tenancy agreement to prove their residence. She further objected to the residence of the applicant since the attached LC1 letter does not indicate the actual residence of the applicant.

As regards exceptional circumstances, she stated that no exceptional circumstances were proved in this case. Further, that the applicant is likely to interfere with witnesses since investigations are still on going and the applicant is not yet committed to high court. That it is in the interest of the public that the accused did not

RESSOLUTION.

The rationale behind the grant of bail is in respect to upholding one's right to personal liberty. It is a constitutional right 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.”

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.

The Court have discretionary powers to grant bail 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, the learned state attorney objected to the sureties as they did not attach proof of residence and that the applicants introductory letter was too general to prove his residence in the absence of land title and tenancy agreement.

In my view, although the introductory letters were not attached to the application, the sureties presented them to court and therefore immaterial that they were not attached to the motion.

Further, LC1 letters are usually general and are official documents once they are stamped by the chairman. That therefore the LC letters are not sufficient to prove residence of the applicant on its own. I therefore do not agree with the learned state attorney that the applicant and his sureties did not prove their residence.

I am also aware that it is not mandatory to prove exceptional circumstances for court to grant bail. However, the applicant in this case pleaded torture and the applicant's broken arm as an exceptional circumstance. However, there was no such proof of torture and a broken arm led in this court. The applicant himself was not in court to prove the same. There was no medical report attached to the notice of motion to prove the said torture. Therefore, find that the applicant did not prove exceptional circumstances as pleaded.

In addition, although the applicant is presumed innocent until proven guilty, the applicant has not been committed as investigations are still going on. He has only been on remand for 8 months and the matter still fresh and subject to investigations,

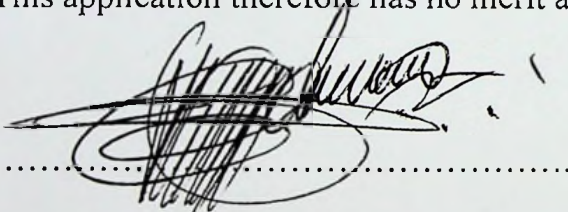
this court cannot guarantee non -interference of the applicant in the investigations since they are still on going.

I must note that the applicant's liberty does not lie in a vacuum. It must be weighed with the danger it poses to the Public in the criminal justice system.

Further, the applicant is charged with 3 counts of a serious offences and which attracts a maximum sentence of death. The chances of abscondment are high if released.

In conclusion therefore, I find that although the applicant has a right to apply for bail, has one sound surety, has a fixed place of abode and this court has discretion to grant bail, for the earlier reasons given in this ruling, I shall exercise my discretion not to grant bail to the accused.

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

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

TADEO ASIIMWE.

JUDGE

04/06/2021.