

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
HCT-00-CR-CM NO. 0031 OF 2021

**[ARISING OUT OF NAB- COURT CASE NO. 112 OF 2020 & SESSION
CASE NO. 8/21)**

NTANANGA CHARLES=====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) and 28(3)(a) of the Constitution, S. 14 (1) & 15 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 rape contrary to section 124 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 rape and has a constitutional right to apply for bail.
2. The applicant has a fixed place of abode and is a resident of kizngu zone Makindye division, kampala District within the jurisdiction of this honourable

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.

3. That the applicant has no other pending charges against him in any other court.
4. That the applicant since the time of committal to the high court, a hearing of his case has never commenced and it is not yet known when the hearing shall commence.
5. That there exist exceptional circumstances that justify the applicant being released on bail.
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 the applicant is a sole bread winner of his family and the survival of his family shall be at stake while the applicant is in prison.
8. That it is in the interest of justice that the applicant be granted bail.

At hearing, the applicant was represented by counsel Seguya Paul While the respondent was represented by Nanziri Shalot a State attorney from 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 under section 14 of the T.I.A to grant the accused person bail. Further that section 15 T.I.A creates exceptional circumstances for grant of bail and that this application is based on sickness, constitutional right, and over stay on remand without trial. That the applicant is aged 44 and is HIV positive.

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He further submitted that the applicant has a fixed place of abode and is resident of Kizugu zone, Makindye Division, Kampala District and he is willing to abide by any bail conditions that may be imposed upon him by this honorable court.

On sureties, he submitted that the applicant has 2 sound sureties with LC1 introductory letters, viz Ntananga Eugene John brother of the accused aged 41 and Ntananga Naluzanira Madareena ages 74.

In reply, the learned state attorney objected to the application for reasons that the sureties presented by the applicant are not substantial as they did not prove their residence. That the 2nd surety, mother to the applicant is elderly aged 73 and therefore cannot ensure compliance of the complainant. That rape is a grave offence and the applicant is likely to abscond.

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.



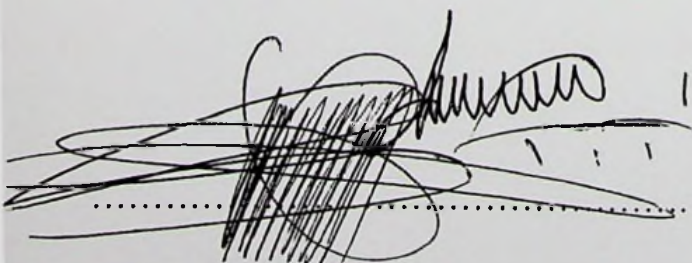
I disagree with learned state attorney's argument that the sureties did not prove residence. In my view, proof of residence does not necessarily require utility bill though it may be additional evidence. The Introductory letters by the LC1 may suffice as proof of residence if found to genuinely issued.

However, I am in agreement with the learned state attorney that although the 2nd surety is a mother to the accused, she is elderly aged 74 years of age and may not be in position to ensure compliance of the applicant/ accused.

Further, rape is a serious offence and attracts a maximum sentence of death. The applicant is a father 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 to avoid interfering with witnesses by the accused person and endangering victims. This case is not different from those I cannot exercise my discretion in favor of accused persons.

In conclusion, I find that although the applicant has a fixed place of abode within the jurisdiction of this court, the 2nd surety is not a substantial surety. For reasons given above, I shall exercise my discretion by not granting bail to the applicant, accused.

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

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

TADEO ASIIMWE

JUDGE

30/03/2021