

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
HCT-00-CR-CM NO. 229 OF 2021

[ARISING OUT OF HCT-00-CR-SC-201 OF 2020

OMACH PATRICK=====APPLICANT/ACCUSED

VERSUS

UGANDA=====RESPONDENT/PROSECUTOR

BEFORE HON. JUSTICE TADEO ASIMWE

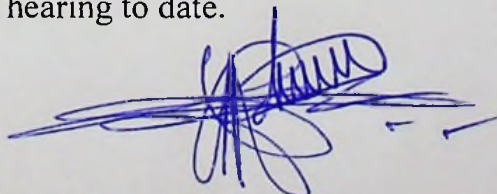
RULING

This is an application for bail pending trial and is brought by way of Notice of Motion under Article 23 (6) and 28 of the Constitution, S. 14&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 Aggravated Defilement contrary to section 129(4)(b) 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 Aggravated defilement contrary to section 129(4)(a) and committed to the high court 29/01/2020 and subsequently committed for trial without hearing to date.



2. That the Applicant has a constitutional right to apply for bail and thus honorable court has discretion to grant bail to the applicant.
3. That there are exceptional circumstances which warrant the grant of bail too the applicant to it grave illness which I incapable of adequate medical treatment while the accused I in custody.
4. That the applicant has a fixed place of a bode within the jurisdiction of this honorable court.
5. That the applicant has substantial sureties, all resident within the jurisdiction of this honorable court and they are aware of their roles as sureties.
6. That the applicant is a law abiding citizen who has never been charged or convicted of any crime before.
7. That the applicant undertakes to attend all sessions of court in this matter and shall not abscond from the trial.
8. That there is possibility of substantial delay in determination of the case
9. That the is no likelihood of the applicant interfering with the witnesses evidence to be tendered before the court.
10. That it is in the interest of justice that the applicant be granted bail.

At hearing, the applicant was represented by counsel Fozzi Taibu and While the respondent was represented by Njuki Mariam a State attorney form 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 abandoned ground 3 in regard to exceptional circumstances and argued that court has powers and discretion under section 14 & 15 of the T.I.A to grant the accused person bail. That the applicant is presumed innocent under the constitution and has a right to apply for bail. That the offence the applicant is charged with is a bailable and is not sure of his trial he has spent 22 months without trial, has a fixed place of abode in Kakawoi a village, Pakwach Town council, Pakwach District and he is willing to abide by any bail conditions that may be imposed upon him by this honorable court.

On sureties, counsel submitted that the applicant has 4 sound sureties with proper identification viz Omacrch Jane Okecho aged 50 years, resident of Kmwwokya kampala, a sister of the applicant, Pauline Omarch aged 38yrs, resident of Buvunguka Kakawori, pakach District, sister to the applicant, Jachan Martin aged 37 years, Resident of kamokya and a brother to the applicant, Ayerango Bruna Omarch, mother of the applicant, disabled and unable to walk.

In reply, the learned state attorney objected to the application for reasons that the offence the applicant is indicted with is grave and attracts a maximum sentence of death. That the sureties presented before court are close relatives who do not know their duties as sureties

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.

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.

In this application, the applicant’s counsel pleaded grave illness as a ground of the application but abandoned it as he did not have medical evidence.

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. This was emphasized in **Abindi Ronald and Anor v Uganda** where court stated 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.”

The applicant’s counsel presented four sureties before this court. However, none of them knew their duties and consequences as sureties of the applicant. Those that tried to mention their duties were being guided by a third party in court.

Further, the 2nd ,4th sureties and the applicant have their fixed places of abode in Packwach District outside the jurisdiction of this court.

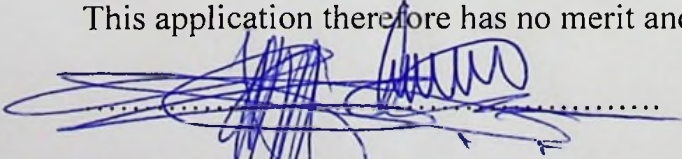
In addition, the 1st and 3rd sureties who have their fixed places abode in the jurisdiction of this court (kamokya), cannot control or monitor the applicant whose fixed place of abode is in Packwach District.

There is indeed no guarantee to this court that the applicant will not abscond if granted bail relying on the kid of sureties presented before this court

Further, aggravated defilement is a serious offence and attracts a maximum sentence of death.

In conclusion, I find that although the applicant has a right to apply for bail and this court has discretion to grant the same, the sureties presented are not substantial and the applicant’s fixed place of abode is outside the jurisdiction of this court I shall therefore exercise my discretion by not granting bail to the accused.

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



TADEO ASIIMWE

JUDGE

20/12/2021