

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

HCT-00-CR-CM NO. 0107 OF 2021

[ARISING OUT OF CRIMINAL CASE NO. A/49/2020) & SCNO. 120/21

RUSOKE DAVID=====APPLICANT/ACCUSED

VERSUS

UGANDA=====RESPONDENT/PROSECUTOR

BEFORE HON. JUSTICE TADEO ASIIMWE

RULING

This is an application for bail pending trial brought by way of Notice of Motion under Article 23 (6) (a) of the Constitution, S. 14 & 15(1) of the Trial on Indictments Act.

The applicant is indicted with the offence of Rape contrary to section 123 & 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 which is bailable and the applicant is committed to the high court without hearing to date.
2. That the applicant suffers from acute chronic Gastritis, migraine headache and wasting syndrome.
3. That the applicant shall not abscond when granted bail.
4. That the applicant has a fixed place of abode in Kalinabiri LC1 zone, Bukoto Nakawa Division within the jurisdiction of this court.

5. That the applicant has substantial sureties ready to stand for him and will abide by the conditions this court may set.

At hearing, the applicant was represented by counsel Robert Rutaro While the respondent was represented by Tusiingwire Viola a State attorney form ODPP.

Counsel for the applicant filed written submissions and made oral highlights while the respondent made an oral reply.

In his submissions, counsel for the applicant relied on article 23(6) of the constitution on and argued 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. That the applicant is suffers from grave illness which cannot be treated in prison. He relied on a medical report dated 14th April 2021 marked annexure A. he further submitted that an application where the applicant was denied bail for lack of proof exceptional circumstance, this medical report was not yet made. He therefore invited court to find that the applicant has proved exceptional circumstances based on his bad health conditions.

In addition, he argued that the applicant has a fixed place of abode at Kalinabiri LC1 zone Bukoto Nakawa Division within the jurisdiction of this court.

On sureties, counsel submitted that the applicant has sound sureties with proper identification viz Mukakizima Magret a mother of the applicant and a resident of Nansana and Rusoke Christine, an Aunt of the applicant, residing in Bwayise ,Kawempe Division whom he invited court to find substantial.

In reply, the learned state attorney objected to the application for reasons that the that the prisons have not confirmed to court that they have failed to treat the applicant and that there is nothing in the report to show that the applicant cannot be treated in the prison as there is no recommendation for further treatment in the report. That in

her view, the applicant's sickness is not grave, the place of abode is not clear and that it is clear that before he was arrested, he was a neighbor of the victim at Kigowa Ntinda and therefore likely to interfere with the witness. She also attacked the evidence about the residence of the 2nd surety as her ID shows that she is a resident of Kyetume Village in Mityana and yet she stated in court to be residing in Bwayise. She therefore invited court to fix the case for hearing since the applicant is already committed to the high court pending trial.

● RESOLUTION.

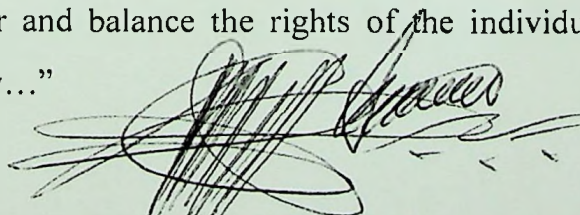
Bail is a constitutional right premised on the presumption of innocence as protected under Article 28 (3) of the Constitution of the Republic of Uganda. This was emphasized in the case of **Abindi Ronald and Anor v Uganda Miscellaneous Criminal Application No. 0020 of 2016**

“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...”

A handwritten signature in black ink, appearing to be 'Kizza Besigye', is written over the end of the text in the previous block.

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 the earlier application, the applicants bail was rejected for failure to prove exceptional circumstances. Although this court is aware that proof of exceptional circumstances is not a mandatory requirement, the applicant in this case before court rooted his application on grave illness as contained in Annexure A, a medical report.

For one to rely on grave illness as an exceptional circumstance, the law is that it is not enough to prove existence of grave illness but rather in addition that the applicant must prove that the prisons are incapable of treating the illness.

In this case a close look at annexure A, a medical Report relied upon by the applicant, shows that the illness of the applicant is capable and is being treated by the prisons.

I am therefore satisfied that exceptional circumstances have not been proved as was found in the earlier application.

However, I shall exercise my discretion and proceed to consider other circumstances of this application.

In this application the applicants counsel objected to the 2nd surety and the place of abode of the applicant.

The evidence on record shows that the 2 sureties live in different places from that of the applicant. It is therefore not certain that they can restrain the applicant if released

since they all stay in different places. I do not find the 2 sureties to be substantial in the circumstances.

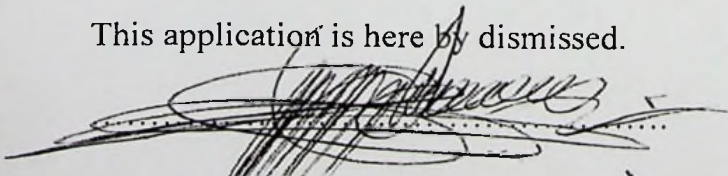
In addition, the gravity and circumstances surrounding the commission of the offence should be considered before bail is granted to the applicant. In this case, the applicant is alleged to have strangled the victim before the commission of the offence and also some properties were stolen in the process. This clearly shows use of violence.

Although the applicant is presumed innocent until proven guilty, the victim was his neighbour and therefore it is very likely that he will interfere with the key witness once released. I must note that the applicant's right to liberty does not lie in a vacuum. It must be weighed with the danger it poses to the Public and the interest in the administration of justice.

Further, Rape is a serious offence, which attracts a maximum sentence of death. The applicant was neighbor of the victim and could easily manipulate/ intimidate vital witnesses including the victim as already stated.

In conclusion therefore, I find that although the applicant has a right to apply for bail and this court has discretion to grant the same, for the earlier reasons given in this ruling, I shall exercise my discretion not to grant bail to the accused. Instead the case should be fixed for hearing since he is already committed.

This application is here by dismissed.



TADEO ASIIMWE

JUDGE

27/05/2021