

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

**HCT-00-CR-CM NO. 150 OF 2020**

**[ARISING OUT OF BUG- CR-AA-. 20 OF 2019)**

**SSERUWOOZA MAJIDU(A2)=====APPLICANT/ACCUSED**

**VERSUS**

**UGANDA=====RESPONDENT/PROSECUTOR**

**BEFORE HON. JUSTICE TADEO ASIIMWE**

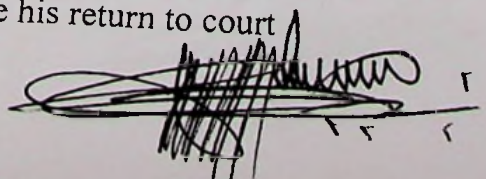
**RULING**

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 two counts of aggravated Robbery contrary to section 285 and 286 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 it is the applicant's constitutional right to apply for and be released on bail at the discretion of this Honorable Court.
2. That the applicant's case is frivolous and has chances of acquittal on trial.
3. That the applicant's trial has delayed as he has been in prison for 1 year and 3 months.
4. The applicant has substantial sureties to Guarantee his return to court



5. That the applicant has a permanent place of a bode within the jurisdiction of this court.
6. That there are no other pending charges against the applicant
7. That the applicant has been committed for trial to the high court
8. That the applicant will not abscond if granted and will abide by the terms and conditions set by court.
9. That it is in the interest of justice that this application be granted

At hearing, the applicant was represented by counsel Kamugisha Gaston While the respondent was reprinted by Tumwikirize Joanita a State attorney from ODPP. Counsel for the applicant made oral submissions in addition to the written which were adopted by court while the respondent's counsel made oral rely which I shall consider in this ruling.

In his submissions, counsel for the applicant argued that under article 28 an article 23 of the constitution, the applicant has a right to speedy trial and is presumed innocent and has a right to apply for bail. That this court has powers to grant it in its discretion in order to ensure liberty of the applicant. That the essence of this that the applicant has not yet been proven by court and consequently suffer irreparable harm if after all this long time he is acquitted. That the applicant has been on remand without trial and that this amounts to delayed trial. That the applicant has a fixed place of abode within the jurisdiction of court and that court should exercise its discretion by giving a second chance to the applicant and grant him bail.

On sureties, he submitted that the applicant has substantial sureties who have undertaken to fulfill their duties.

In reply, the learned state attorney objected to the Bail application arguing that the applicant/ accused was charged with two counts of aggravated robbery where the

applicant threatened to use a panga and is likely to abscond if released. That the LC1 letter produced by the applicant insufficient to prove residence.

On sureties, she submitted that the 3<sup>rd</sup> surety a one Musoke did not produce his original ID and therefore not substantial introduction letter does not depict the purpose for which it was issued and therefor she is not a substantial surety. She concluded by generally opposing grant of bail to the applicant and invited court to fix the main case for hearing.

#### **RESSOLUTION.**

The rationale behind the grant of 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. 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.”

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...”



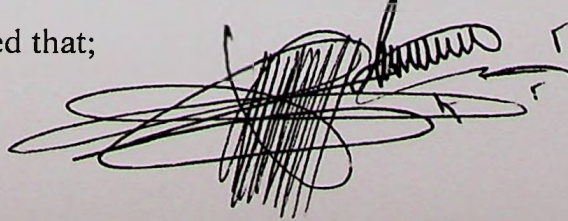
The Court's discretionary powers to grant bail are enshrined under Section 14 (1) of the Trial on Indictments Act and the conditions under which bail is to be granted under Section 15. These circumstances are broken down to proof of exceptional circumstances like grave illness, a Certificate of no objection 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. 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.

Hon. Justice Stephen Mubiru in the case of **Abindi Ronald and Anor v Uganda** was of the view 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."

In this application, the state Attorney objected to the introductory letter of the applicant is not substantial. However, the letter was duly stamped by the LC1 authorities and in my view qualifies to be a genuine document which serves the purpose of introduction of a person.

On the argument that the 3<sup>rd</sup> surety is not substantial for lack of the Original National ID, I don't find it reason enough to declare one a non- Substantial surety. It can be cured by ordering that particular surety to present his original ID to the registrar of this court before the accused is released on bail.

Court in the case of **Mugisha Ronald V Uganda HCT- 01-CR-CM-NO-050 of 2018** while granting an application for bail stated that;

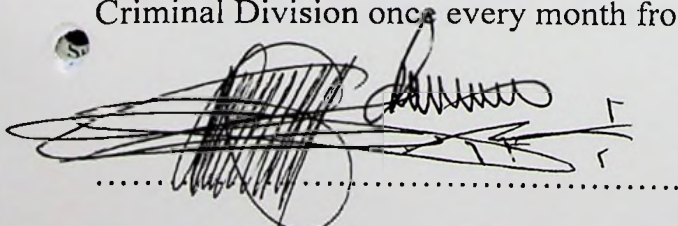
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*“Since the sureties appear responsible persons who will ensure the accused returns to court to stand trial, and in view of the presumption of innocence under Article 28 (3) of the Constitution of the Republic of Uganda, 1995, I find and hold that this is a fit and proper case to grant bail to the Applicant.”*

In this case, I find that the applicant has a fixed place of abode within the jurisdiction of this court and he has substantial sureties who have committed themselves to ensure compliance with the terms by applicant. Therefore, this application is allowed and bail is hereby granted to the applicant on the following terms:

1. The applicant shall deposit a sum of 5,000,000/- (five million) cash.
2. Each of the 3 sureties is also to be bound in the sums of UGX 20,000,000/- (twenty Million) not cash.
3. The 3<sup>rd</sup> surety, Musoke is ordered to present his original National Identity Card to the registrar of this court before the accused is released on bail.

If the above 3 terms are fulfilled, the applicant shall report to the Registrar of the Criminal Division once every month from the date of this ruling.



TADEO ASIIMWE

JUDGE

31/03/2021