

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**HCT-00-CR-CM NO. 100 OF 2021**  
**[ARISING OUT OF KRA-0042 OF 2020)**

**SSENTONGO BOSCO=====APPLICANT**

**VERSUS**

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

**BEFORE HON. JUSTICE TADEO ASIIMWE**

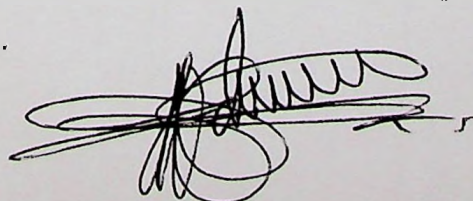
**RULING**

This is an application for bail pending trial and is brought by way of Notice of Motion under Article 23 (6) (a) of the Constitution, S. 14 (1) & S.15(1,2,3) of the Trial on Indictments Act.

The applicant is indicted with the offence of Aggravated Robbery contrary to section 185 & 186(2) 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 Robbery contrary to section 185 & 186(2) of the penal code Act.129 and committed to the high court without hearing to date.
2. That the applicant is a sole bread winner of his family and has solely been taking care of the family and the children.
3. That the applicant shall has grave illness and is incapable of getting adequate medical treatment while he is in custody.



4. That the applicant has a fixed place of abode within the jurisdiction of this Honorable court where he undertakes to reside during the entire period of trial upon release on bail.
5. That the applicant has substantial sureties

At hearing, the applicant was represented by counsel Praise Ahurira While the respondent was represented by Njuki Mariam a State attorney form ODPP.

Applicant's Counsel filed written submissions while the respondents made oral submissions which I shall consider in this ruling.

In his submissions, counsel for the applicant relied on article 23 of the constitution 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. She relied on the cases of **Uganda vs col RTD Kizza Besiigye Constitutional Reference no 20 of 2005** and **Foundation for Human Rights vs the Attorney General**;(constitutional petition number 20 of 2009 arguing that the applicant is presumed innocent until proven guilty or pleads guilty and that if court is satisfied that the applicant wont abscond from trial, he should not be denied bail regardless of gravity of the offence. That applicant suffers from a condition of chronic nature that requires special medication that the prisons may not be able to offer.

That the applicant has a fixed place of abode at Namungona Zone LC1, Lubya parish, Lubaga Division, Kyadondo, kampala 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 Ssenyonjo Moses a biological brother of the

applicant, resident of Nansana town council, Wakiso District and Nansubuga Jane Francis, a cousin of the applicant and resident of Nansana Wakiso District.

In reply, the learned state attorney objected to the application for reasons that the applicant is charged with an offence of grave nature and involves personal violence. That the applicant has only been on remand for 8 months and is not yet committed as investigations are still going on. That there is a likely hood that the applicant will interfere with investigations.

### **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 aboard, sound sureties, among others.

In this case, I am convinced that the applicant presented sound sureties and has a fixed place of abode within the jurisdiction of this court.

I am also aware that it not mandatory to prove exceptional circumstances for court to grant bail. However, the applicant in this case pleaded grave illness as a ground to this application based on medical evidence. but failed to prove that the prisons cannot manage his condition.

In this case, no medical form was attached to the pleadings and none was led in evidence in evidence at hearing. Therefore, the applicant failed to prove to the satisfaction of court that he suffers from grave illness that cannot be treated by the prison authorities.

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, aggravated robbery is a serious offence and attracts a maximum sentence of death. The chances of absconding are high if released.

In conclusion therefore, I find that although the applicant has a right to apply for bail, has sound sureties, 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 applicant.

This application is hereby dismissed. Instead it is directed that the ODPP should take action on the main case on the basis of evidence whether to proceed with the case or not.

A handwritten signature in black ink, appearing to read 'Tadeo Asiimwe', is written over a horizontal dotted line. The signature is somewhat stylized and includes a large, scribbled-out area on the left side.

TADEO ASIIMWE.

JUDGE

04/06/2021.