

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

**HCT-00-CR-CM NO. 0071 OF 2021**

**[ARISING OUT OF HCT-00-CR-SC-0560 OF 2020**

**SSERUWUGE BOSCO=====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) of the Constitution, S. 14 (1&2) of the Trial on Indictments Act.

The applicant is indicted with the offence of Aggravated Defilement contrary to section 129(3)(4)(a) 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 without hearing to date.
2. That the applicant is a sole bread winner of his extended family and incarceration has greatly affected the family.
3. That the applicant shall not abscond when granted bail.

4. That the applicant has substantial sureties who are mature, law abiding citizens and proper residents within the jurisdiction of this honorable court
5. That the applicant and his family members are residents within the jurisdiction of this honorable court.
6. The applicant is not in a position to interfere with investigations, which any case is complete.
7. That bail is a constitutional right to be enjoyed by all those who qualify.
8. That the case against the applicant is weak and the applicant is likely to succeed if afforded freedom and facilities to prepare his defence and prepare his witnesses.

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

Both Counsel filled written 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. That the applicant is presumed innocent until proven guilty or pleads guilty and that it would be unfair 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.

That the applicant has a fixed place of abode at central D zone LC1, Natete parish Rubaga Division where he derives his prime livelihood and also an ancestral home in Ssekinga LC1 Butalaga parish, Bisaga Subcounty, Bukomansimbi district. That the applicant is well introduced by both LC1 persons of Rubaga and Butalanga.

On sureties, counsel submitted that the applicant has sound sureties with proper identification viz Mutagubya Fred Kaggwa a brother of the applicant and a resident of Kajjansi Town council, Bwanika Joseph a brother, resident of Nateete Central A,



Rubaga Division, Muweesi Robert also brother of the applicant, a resident of Lungujja zone 8 Local Council 1 Rubaga North, Kampala and Namukasa Edith, a friend to the accused and stay home mother.

In reply, the learned state attorney objected to the application for reasons that the applicant has already been committed to the high court pending trial. That the offence with which the accused person is charged is of a capital nature with a maximum sentence of death and that there is a likelihood of the applicant absconding from trial if released on bail.

#### **REASONING.**

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 case, the learned state attorney did not object to the sureties. I am also convinced that the applicant presented substantial witnesses capable of ensuring that the applicant does not abscond from trial.

However, the gravity and circumstances surrounding the commission of the offence should be considered before bail is granted to the applicant.

The applicant in this case is age 40 years while the victim is aged 7 years, an age difference of 37 years, worse still the applicant was/is a man friend/lover of the victim’s grandmother.

Although the applicant is presumed innocent until proven guilty, the victim is quite young and prone to compromise and intimidation and as a key witness in this case needs protection if the criminal case is to be properly prosecuted. The applicant has authority over this child and he is likely to compromise her if released since they were staying in the same house.

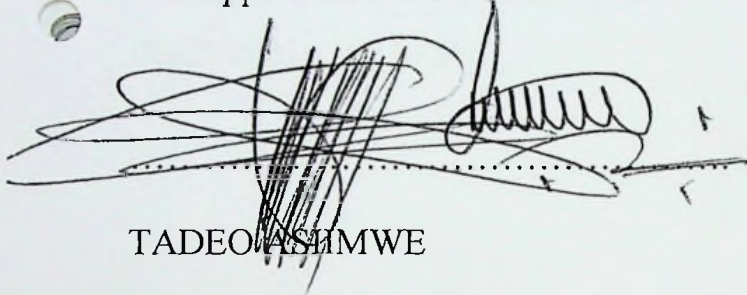
I must note that releasing the applicant on bail is not is not an automatic one. It must be weighed with the danger it poses to the Public and witnesses in the criminal justice system.



Further, aggravated defilement is a serious offence and attracts a maximum sentence of death. The applicant is in a position of a grandfather father to the victim in this case and could easily manipulate/ intimidate her 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.

This application therefore fails and the same is hereby dismissed.

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

TADEO ASHIMWE

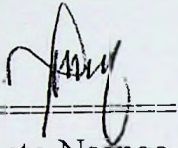
JUDGE

06/04/2021

Ruling delivered in the presence of:

1. Ms Nabwire Juliet, for the Applicant/Accused.
2. The Applicant/Accused.

Court Clerk - Mr. Nabongho George.



Festo Nsenga –  
Deputy Registrar

06/05/2021 – 11:35 a/m