



The state opposes this application. One Mariam Njuki deposed an affidavit in reply in which she states that the applicant is likely to abscond, if released on bail, as the sureties presented are likely to shield her and cause her to relocate to an unknown place. That she has also not shown any exceptional circumstances. That she is unlikely to report for trial because working as a house help means she will move from house to house looking for employment. Lastly that the applicant has no fixed place of abode.

### **Representation**

The applicant was represented by Ms Winnie Adukule.

Ms Hope Mutoni Rukundo for the respondent

### **Determination**

The parties were granted leave to file written submission which are on record but will not be reproduced here. I have however closely studied them and they will be referred to in this ruling.

The principal is that bail is a recognisance between the accused and the Court that, once granted temporary release, the accused person will be in Court whenever required. It allows an accused person to avoid pre-trial detention. It is also now settled that the court is clothed with the discretion whether or not to grant bail.

It should be noted that under **Article 23 (6) (a)** of the **Constitution** every accused person enjoys a constitutional right to apply for bail.

As the applicant is a juvenile offender charged with a capital offence, then the applicable provisions are in **the Children Act** which in Section 90 (1) (a) stipulates,

(1) Where a child appears before a court charged with any offence, the magistrate or person presiding over the court shall inquire into the case and unless there is a serious danger to the child, release the child on bail—

(a) on a court bond on the child's own recognisance;

(b) with sureties, preferably the child's parents or guardians who shall be bound on a court bond, not cash.

It should also be noted that under Section 91 (5) of **the Children Act** (supra), the maximum periods for bail are set. It provides as follows,

(5) Remand in custody shall not exceed—

(a) three months in the case of an offence punishable by death; or

(b) three months in the case of any other offence.

The provision is couched in mandatory terms.

It is an overriding consideration in offences where children have come into conflict with the law to avoid institutional detention as much as possible. Where, such as in the present case, the offence is of a grave character, then the child may be remanded.

But even where remand has been ordered, **the Children Act** directs expeditious completion of proceedings within given timelines.

In the instant case the applicant has been on remand for one year, one month and three weeks. This period is well beyond the mandatory statutory period for bail where a child is charged with a capital offence. The offence of Aggravated Trafficking in Children c/s 3 (1) (a) and 5 (a) (f) of **the Prevention of Trafficking in Persons Act 2009** attracts a maximum sentence of death. For that reason the maximum a child indicted under this section can remain on remand is three months [see Section 92 (5) (a) of **the Children Act**]. In light of that therefore, all other considerations are secondary and the applicant must be considered for release on bail.

As can be seen, the applicant should be given bail but the paramount consideration is assurances that the applicant, though a child, will not abscond. In this case the child offender was already working as a nanny when she was arrested. The person who made an affidavit on her behalf is an uncle and her guardian. There is no mention in the application of the applicants parents.

It is imperative that the court is satisfied as to whether the person applying to receive the child has a fixed place of abode. It should be that the applicant can undoubtedly be traced to the address he has provided in the event she does abscond.

The court therefore directs:

1. The applicant shall be released on bail on her own recognisance.
2. The sureties shall be bound on a Court bond not cash.
3. The sureties shall be examined by the Registrar of this Court to determine whether they are substantial.
4. Before actual release, the Probation and Social Welfare officer, shall inquire into the child's circumstances and in particular relating to the relationship with the sureties and whether it would be proper to release the child into the custody of Seremba Ibrahim.
5. The report following '4' above shall be delivered to the Registrar of this Court within 3 days after this ruling is read.

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**Michael Elubu**

**Judge**

**19.09.2021**