

RULING

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That the Applicant was arrested, charged and remanded to prison for the offence of Murder contrary to sections 188 and 189 of the Penal Code Act Cap 120 in June 2022 and has never been committed for trial; it is the

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Applicants right to apply to be released on bail, the Applicant has a fixed place of abode within the jurisdiction of this Court, and that he has substantial Sureties within the jurisdiction of the High Court.

Counsel introduced them before Court and presented their original National Identity Cards save for the third Surety whose original ID was not availed to Court, letters from the LC of their areas, photocopies of Land Certificate and Sale Agreement for purchase of a kibanja for both Nantaba Lovincer, the applicant's mother and Namuddu Catherine Ssali, the Applicant's maternal Aunt. However, suffice to note is that the original or certified copies of the same were not presented before Court. Letter explaining that certification in lands could not be done in a timely manner was presented later to Court.

Learned Counsel Namata Edith who represented the Applicant based her submissions on the above grounds and the supporting affidavit. For brevity, I will not repeat all the arguments of counsel.

It was submitted for the Applicant that since the Applicant has spent nine months on remand without committal to the High Court for trial and not known when investigations will be completed and his continued detention is a violation of human rights, Counsel invited Court to exercise its discretion under Article 23(6)(a) of the Constitution and fortified her submissions by the case of **Col. Rt. Kizza Besigye Vs Uganda Crim. App No. 20 of 2016** on the argument that an Accused person should not be kept on remand unnecessarily before trial, she thus prayed that the

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accused should be granted bail. She presented the three Sureties in Court and prayed that the Court finds them substantial.

The Respondent relied on an Affidavit deposed by Nanyonga Josephine on the 24th of February, 2023, she states that she is employed by the Office of the Director of Public Prosecutions (ODPP) as a State Attorney; the Applicant is charged with a grave offence of Murder contrary to section 188 & 189 of the Penal Code Act which carries a maximum sentence of death upon conviction and therefore there is a likelihood of inference with the witnesses since investigations are still on going.

The Respondent was represented by Ms. Nanteza Victoria Ann who expounded on the grounds for opposing the application as contained in the affidavit in reply. Similarly, I will not repeat all the arguments of Counsel.

Counsel submitted that the charge of Murder is grave in nature and since the Applicant is not yet committed to High Court there was a high likelihood of interference of the Prosecution witness as the investigations were ongoing.

She submitted that if the Court exercises its discretion to grant bail to the Applicant, then stringent terms should be set out for the Applicant and his sureties to compel his attendance in Court whenever he is required.

In rejoinder counsel for the Applicant prayed that leave be granted to them to present the certified copies of the certificates of title to Court and a translated Sale Agreement.

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ANALYSIS AND DETERMINATION

This Court shall consider the following in deciding whether or not to grant bail as was expounded in; *Abindi and Another versus Uganda, Miscellaneous Application 20 of 2016*); the personal circumstances of the Accused/Applicant, the circumstances of the crime and other relevant information which includes; the seriousness of the offence; the need to protect the victim or victims of the offence; protection of the community from further offending; the strength of the prosecution's case; the severity of the possible sentence; the probability of conviction; the prior criminal history of the accused; the potential to interfere with prosecution witnesses; the possible delay in conducting the trial; the requirements for preparing a defence; and the view of the police Criminal Investigations Department and Prosecution.

In *Henry Bamutura versus Uganda Misc. Application 19 of 2019*, Hon Lady Justice Prof. Tibatemwa-Ekirikubinza stated that the hardship, if any, facing an Applicant, are no exceptional or unusual factors for consideration in a bail Application. I find no reason to depart from that finding.

The Applicant presented three Sureties who appeared in Court and he prayed that the Court finds them substantial.

Upon examination of the Sureties and documents in support, I make the following observations, Court find the first surety and second surety substantial being a biological mother and maternal aunt to the Applicant.

Katerega William although introduced to court was not one of the sureties named in paragraph 8 of the Applicant's affidavit. I will therefore make no consideration to his antecedents.


In regard to the Applicant, his original National Identity Card was not presented in court nor was a photocopy attached to the affidavit. It is therefore difficult for this Court to ascertain if he is a Citizen of Uganda or his origin.

I am persuaded by the Respondent's submission that since the investigations are still ongoing there is a high likelihood for interference with witnesses taking into account that the offence if proved attracts a hefty penalty.

I direct that Respondent to ensure that investigations are completed and comital, if any is expedited.

For the above reasons I decline to exercise my discretion to grant bail. I therefore dismiss this application.

Dated at Mukono this^{6th} day of March 2023.



HON. LADY JUSTICE CHRISTINE KAAHWA
JUDGE

