



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
MISCELLANEOUS APPLICATION 75 OF 2020
[ARISING FROM COURT NO MBR-00-AA-55/2018]**

**TWESIGYE GODWIN ----- APPLICANT
VERSUS
UGANDA ----- RESPONDENT**

Before: Hon. Justice Nshimye Allan Paul. M.

BAIL APPLICATION RULING

BACKGROUND

The applicant was charged with Aggravated Robbery C/S 285 and 286 of the PCA (refer to POLICE CASE NO: MBR CRB 628/2018 and DPP CASE NO: MBR-CO-1518/2018) and thereafter remanded to prison. He subsequently filed this application through his lawyers Dhabangi & Co Advocates to be released on bail.

APPLICATION

This application is brought by way of Notice of Motion and the applicant is relying on section 14 (1)(a) & (b), 3 and 4 of the Trial on Indictments Act.

GROUND

The grounds of the application as presented in the Notice of Motion and supporting affidavit deposed by the applicant are as follows;

1. That the applicant fronts his innocence of wrong doing.
2. That the applicant has no previous criminal record and there is no other changes pending against him.

3. That the applicant has a fixed place of abode at Mbarara Municipality and will abide by any bail conditions and he will not abscond.
4. That the applicant has substantial sureties all residents within courts jurisdiction.

SUBMISSIONS

The applicant submission was to the effect that this his second bail application, he stated that the first was rejected because he did not have substantial sureties but now he has others for courts consideration. Three sureties were presented for courts consideration they included Kyeyune James, who is a brother in-law of Tel 0752328472. Bayoka Irene who is a mother in-law, of Tel 0754285051 and Nabasajji Giida who is a friend and her telephone number is 0702332607.

The sureties submitted copies of their national identity cards and letters of introduction from Mr Lutwama Deo of Telephone number 0774436340, the LC1 Chairperson Katojo Cell, Katojo Ward Mbarara South Division in Mbarara City. The applicant also presented a copy of his national Identity card NIN CM891011039Z7H, and a letter from the Local council introducing him as a resident.

Adv Jacob Nahurira for the state opposed the bail application submitting that the applicant has not complied with the provisions of **The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 (herein after referred to as the Bail Rules 2022)**. That the applicant not proved any of the exceptional circumstances such as grave illness certified by a medical officer of the prison, a certificate of no objection signed by the Director of Public Prosecution or The infancy or advanced age of the applicant. He also submitted that the sureties are not substantial.

In rejoinder the applicant submitted that he has been on remand for over four years and yet he is innocent. He prayed court grant him bail.

DETERMINATION

It is trite law that *"Every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty or until the person has pleaded guilty"* as provided for in Article (28) (3) (a) of the Constitution of the Republic of Uganda and



in Rule 5 (a) of The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022.

The same principle of presumption of innocence is contained in Article 11(1) of the UDHR and Article 14(2) of the ICCPR, which provisions, Uganda is duty bound to respect as a signatory to both international instruments.

It is also trite that a person arrested in respect of a criminal offence has a right to apply for bail pursuant to the provisions of Article 23 (6) of the Constitution of the Republic of Uganda. It should be noted though that the grant or refusal to grant bail is at the discretion of court as was held by the court of appeal in **Uganda v Kiiza Besigye (Constitutional Reference 20 of 2005)**.

It is further noted that the law in section 15 of the Trial on Indictments Act (TIA) requires the applicant seeking bail to prove to the satisfaction of court exceptional circumstances (**refer to section 15(3) of the TIA**) and also prove that he or she will not abscond (**refer to section 15(4) of the TIA**).

The provisions in section 15 of the TIA must nonetheless be considered in line with the interpretation of the Supreme Court in **Foundation for Human Rights Initiatives Vs Attorney General (supreme Court Constitutional Appeal 3 of 2009)** where it stated that;

"I also note that section 15 of the TIA also predates the 1995 Constitution. It is however saved as an existing law under Article 274 of the Constitution which enjoins Courts to construe existing laws, to bring it in conformity with the Constitution. Such construction requires that if Court finds it necessary to consider exceptional circumstances in the course of hearing a bail application involving offences listed under section 15(2) of the TIA, Court should not restrict itself to only considering the exceptional circumstances provided for under section 15 (3) of the TIA. Other 'exceptional circumstances' might exist."

I am alive to the fact that even after considering whether the applicant has proved exceptional circumstances or that he or she will not abscond, the court in exercising its discretion to grant or deny bail, ought to also apply the balancing test. It must balance between the interests of the individual and those of the society, which is without doubt interested and entitled to a crime free environment for its inhabitant's



peace of mind. On this aspect, the words of Hon Chief Justice Bart M Katureebe in the decision of Foundation for Human Rights Initiatives vs Attorney General (supreme Court Constitutional Appeal 3 of 2009) are instructive. He stated that;

“the institution of bail is meant to protect and guarantee the fundamental rights of the individual to liberty, the presumption of innocence and the due process of the law on the one hand; and the societal interests on the other hand. ...This calls for a balance by the courts in exercise of this judicial function between the interests of the accused and those of the community”.

The Evidence on court record as contained in the applicant's affidavit in paragraph 3 is that he is innocent, further that he has a fixed place of abode as stated in paragraph 5. Lastly he stated in paragraph 6 that he has substantial sureties.

I have carefully considered the arguments of both the applicant and the state, I have also considered the evidence on court record and the law applicable, and It is my opinion that when dealing with bail applications two requirements in the law must each be independently addressed and proved, namely;

1. The applicant ought to prove exceptional circumstances as listed in the Bail Rules 2022, or The Trial on indictments Act, or any other exceptional circumstance different from those listed in the Bail Rules 2022 and the Trial on indictments Act, if the applicant wants to base his proof of exceptional circumstances on the interpretive ruling of the supreme court in Foundation for Human Rights Initiatives vs Attorney General (supreme Court Constitutional Appeal 3 of 2009).

The state has submitted that the applicant has not proved any exceptional circumstances as detailed in the bail Rules 2022 or TIA cap 23. The applicant in reply on this point submitted that he has been on remand for four years. I have perused the indictment attached to the application and indeed the fetails therein show that Court Case No is MBR-OO-CR-AA-055/ 18, the POLICE CASE NO is MBR CRB 628/2018 and the DPP CASE NO is MBR-CO-1518/2018, which are all of 2018.



In my opinion the case numbers confirm his assertion that he has been on remand for now 4 years, this is a long time as he awaits trial. When this period is considered within the framework of his constitutional rights it is an exceptional circumstance on court record that court ought to consider. This would fall within the expanded interpretation of the supreme court in the *Foundation for Human Rights Initiatives v Attorney General* (supreme Court Constitutional Appeal 3 of 2009).

2. The applicant ought to also independently prove that he or she will not abscond (refer to section 15(4) of the TIA). In this category court will consider whether the applicant has a fixed place of abode, or substantial sureties among others. I find that the evidence on court record is sufficient to show that the applicant has a fixed place of abode as confirmed by the letter from the local authorities in Katojo Cell mentioned above. I also find the sureties presented substantial.

In balancing the applicant's interests emanating from his constitutional rights and the interest of the public as protected by the Office of Director of Public Prosecutions, I find that this is a deserving case for court to grant bail.

I grant bail to the applicant on the following terms;

1. The applicant will pay a cash bail of Uganda shillings one Million.
2. The sureties are each bonded in a sum of Uganda shillings ten Million noncash.
3. The applicant will report to the Registrar of the Highcourt Mbarara on every first Monday of each Month with effect from 3rd October 2022 until otherwise directed by court.


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Nshimye Allan Paul M.

JUDGE

16-09-2022