

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

**CRIMINAL MISC. APPL. No. 190 of 2022**  
**(Arising From Nabweru Court Case No 14 and 16 of 2021)**

**KAWUKI ALFRED** :::::::::::::::::::::::::::::: **APPLICANT**

## Versus

**UGANDA** ..... **RESPONDENT**

**BEFORE: HON. MR. JUSTICE MICHAEL ELUBU**

## RULING

This application is commenced under Articles 23 (6) (c) and 28 (3) (a) of the **Constitution of the Republic of Uganda**; Sections 14 (1) of the **Trial on Indictments Act**; Rule 2 of **The Judicature Criminal Procedure (Applications) Rules**; and **Items 11, 12, 13 and 14 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions**.

The applicant, **KAWUKI ALFRED**, seeks orders that he be released on mandatory bail.

The grounds on which the application is based are set out in the Notice of Motion and elaborated in affidavit sworn by the applicant.

He states that on the 24<sup>th</sup> day of March 2021 he was charged with Aggravated Defilement and remanded in Luzira Prison. That he has been on remand to-date, a period of more than 500 days. That he has been advised by his lawyers that he now qualifies for a release on mandatory bail under Article 23 (6) (c) of the Constitution. That he applied to the Chief Magistrates Court in Nabweru for his file to be transferred to the High Court as stipulated under Item 11 (3) of **The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions 2022**. That he has sound sureties who are ready to stand for him. He adds that he has a fixed place of abode. That attached are letters from that LC offices

that verify this. That the trial is likely to take a long time. That he will abide by any conditions that this Court may set.

The respondent opposed this application. In an affidavit in reply deposed by Ms Amy Grace, a State Attorney, it was deposed that the applicant was charged on 3 counts of Aggravated Defilement, which offences involve personal violence and carry a maximum sentence of death. That owing to the severity of sentence, there is a likelihood that the applicant will abscond. That he does not have substantial sureties. That the applicant has been committed to the High Court for trial and the state has sufficient evidence against him. That the applicant has not demonstrated that he will not abscond if released nor has he proved that he has a fixed place of abode. Therefore if released, it will be very difficult to trace for the accused. It is therefore fair and just that this application be denied

The applicant is represented by Ms Thomas and Michael Advocates who have filed written submission on his behalf.

Ms Tumwikirize Joanita appeared for the respondent.

### **Determination**

This application is made on the premise that the applicant qualifies for mandatory bail. Because the applicant was charged with the offence of Aggravated Defilement, which is only triable by the High Court, then the relevant provision of **the Constitution** is Article 23 (6) (c) which states that,

Where a person is arrested in respect of a criminal offence in the case of an offence triable only by the High Court, if that person has been remanded in custody for one hundred and eighty days before the case is committed to the High Court, that person shall be released on bail on such conditions as the court considers reasonable.

Clause 10 (1) of **The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions 2022** reproduces the above article of the constitution.

This Court notes that the provision is couched in mandatory terms.

The procedural provision is Clause 10 (3) which stipulates,

For the avoidance of doubt, mandatory release on bail for offences triable by the High Court under Article 23 (6) (c) of the Constitution shall be granted only by the High Court.

In this case the applicant faced charges of Aggravated defilement on three different lower court files in the Nabweru Chief Magistrates Court vide Nab 16 of 2021; 15 of 2021; and 14 of 2021. According to his Indictment and Summary of The Case, he was committed on all three files with all the charges joined in this one indictment.

In view of the committal, the applicant no longer qualifies for a mandatory release on bail. Such release is only available where an accused person has been on remand for a continuous period of 180 days and has not been committed to the High Court for trial.

In view of the fact that this application was specific to an application for mandatory bail it fails and is hereby dismissed.

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**Michael Elubu**

**Judge**

**19.10.2022**