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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CRIMINAL DIVISION)

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MISC. APPLICATION NO. 222 OF 2021
[ARISING FROM MAKINDYE COURT CRIMINAL CASE NO. 101 OF 2021]

ONEBE FRANCIS:

APPLICANT/ACCUSED

VERSUS

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UGANDA:
RESPONDENT/PROSECUTION

Ruling By Justice Gadenya Paul Wolimbwa

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1.0 Introduction

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This application for bail is brought under articles **28(3)(a) and 23(6)(a) & (c) of the Constitution of the Republic of Uganda, Section 14 (1) & 15, of the Trial on Indictment Act Cap 23, the Judicature (Criminal Procedure (Applications) Rules S.I 13-8.** The application seeks the following order: -

That Onebe Francis, presently detained at Kitalya Government Prison on charges of Murder contrary to S.188 and 189 of the Penal Code Act Cap 120, be released on bail pending trial.

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Briefly, Onebe Francis, hereinafter referred to as 'the applicant' and Oriekot Bonny are charged with the offense of murder contrary to section 188 and 189 of the Penal Code Act. The prosecution alleges that the two accused persons and others still at large in January 2021 at Mawanga Zone LCI, Munyonyo, Makindye Division in Kampala district, murdered Aiso Immaculate Mary Blessing Onebe, the wife of the applicant. The applicant and his co-accused are awaiting committal to the High Court pending the conclusion of inquiries by the Prosecution. The applicant has filed this application to be

released on bail as he awaits further processing of the case against him by the prosecution.

40 The grounds of the bail application are that-

- a) The applicant was on the 22nd day of September 2021 arraigned before Chief Magistrate Court Makindye, charged with the offence of murder contrary to sections 188 and 189 of the Penal Code Act Cap.20 and consequently remanded at Kitale Government Prison pending committal proceedings and subsequent trial by High Court.
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- b) The applicant has a constitutional right to apply for and be granted bail pending his trial by the High Court.
- c) The charges preferred against the applicant are bailable in this honourable court.
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- d) Exceptional circumstances exist in favour of the applicant to warrant this court to exercise its discretion and grant him bail pending trial.
1. The applicant is 63 years old and therefore a person of advanced age with ailments associated with old age, to wit, high blood pressure and prostate cancer.
 2. The applicant is suffering from chronic prostatitis and that before his arrest, he was undergoing treatment, and which can only be obtained when he is outside prison.
 3. Before his arrest, the applicant had complained of Nocturia, which his personal doctor associates with prostate cancer, for which he had been referred in September 2021 to a specialist in Aga Khan University Hospital in Nairobi, Kenya pending further medical attention in the United Kingdom after VISA issuance.
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- e) The applicant does not have any history in his life, as having ever committed an offence.
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- f) The applicant is a Managing Partner of Price & King an Audit Firm employing over 30 employees whose survival and smooth running is entirely dependent on his skill and expertise, he being the most senior Auditor of the Firm hence needs time to physically attend to office and put in place a strong management system while he attends to these proceedings/trial.
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- 75 g) The applicant is equally a Chief Executive Officer of Pentagon Security Limited a company providing security services and employing over 2000 Ugandan citizens, being the Chief Executive Officer, his services are highly required for the survival of the said company.
- h) The applicant is the Non-Executive Director – Board member for Post Bank Uganda, which requires his services and which he can only render when he is out of prison.
- 80 i) The applicant is still innocent until proved guilty and/or he pleads guilty.
- j) The applicant has substantial sureties with fixed places of abode within the jurisdiction of this Honourable Court ready to stand surety for him.
- 85 k) The applicant has a fixed place of abode at Monyonyo, Mawanga village, Buziga Parish, Makindye Division Kampala District within the jurisdiction of this Honourable Court.
- l) The applicant was previously admitted on police Bond which he obeyed religiously.
- 90 m) The applicant understands, is ready and willing to abide by all the terms and conditions as this Honourable Court may be pleased to set for him.
- n) It is fair, equitable and in the interest of justice that the applicant be granted bail pending trial.

95 The application is supported by the Affidavit of the Applicant which restates the grounds of the application suffice to mention the following key information: -

- 100 a) That on the 16th day of September 2021, I was re-arrested and detained at Jinja Road Police station and special Investigation Unit Kireka and consequently, on the 22nd day of the same month, I was arraigned before the Chief Magistrate of Makindye Chief Magistrate Court and remanded to Kitalya Government Prison where ii have been to date.
- b) That I was born on 4th May 1958 and now am 63 years old and therefore a person of advanced age with ailments associated with old age, to wit high blood pressure and prostate cancer.
- 105 c) That I am suffering from chronic prostatitis and that before my arrest, I was undergoing treatment and which treatment I can only obtain when I am outside prison.
- d) That before my arrest, I had severe pain around my groin and upon visiting my personal Doctor one Dr. Vincent K. Karuhanga who

- 110 examined me and recommended a scan which I did, and the results revealed an enlargement of my prostate among others a condition he associated with prostate cancer.
- e) That my said doctor informed me that my condition requires specialised treatment and he recommended me to a specialist in the United Kingdom.
- 115 f) That due to the persistent pain I was undergoing in prison, I through my lawyers requested to be examined by the Medical Superintendent of Prisons, which medical examination I underwent.
- g) That the results of my said examination by the Medical Superintendent of Prisons confirm that I am suffering from chronic prostatitis, which condition cannot be handled by the prison authorities, a reason that I pray, I be granted bail to seek specialised treatment.
- 120 h) That I have substantial sureties with fixed places of abode within the jurisdiction of this honourable court ready to stand surety for me.
- 125 i) That I have a fixed place of abode at Munyonyo, Mawanga village, Buziga Parish, Makindye Division, Kampala District within the jurisdiction of this Honourable Court.

The Respondent filed an affidavit in opposition deponed by D/ASP Ochom Nobert, a Police Officer, attached to CID Headquarters Kampala. The relevant part of the affidavit are as follows -

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- a) That I am one of the investigating officers in this case where the accused/applicant is charged with the murder of his wife Aiso Immaculate Mary Blessing Onebe contrary to section 188 and 189 of Penal Code Act.
- 135 b) That investigations in the case commenced on 6th January 2021 at around 2100 hours as reported at Kabalagala Police Station, when the deceased disappeared from her matrimonial home under unclear circumstances.
- c) That upon taking over the investigations by CID Headquarters, the applicant was summoned, placed on watch list, and instructed not to move outside Kampala without the express permission of the investigators, as facts regarding the alleged disappearance cum murder of the deceased were being established.
- 140 d) That in the course of investigations, I received reliable intelligence that the applicant was planning to secretly exit the country to London, United Kingdom via Nairobi, Kenya on purported medical grounds without adherence to the issued instructions by the investigators.
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- 150 e) That the accused/applicant was immediately arrested on 6th September 2021 and upon interrogation, he admitted to have been in the process of travelling to United Kingdom, via Nairobi.
- f) That the following day, 7th September 2021, a search was conducted at the home of the deceased where a partially decomposing body, later confirmed to be that of Aiso Immaculate Mary Blessing Onebe was recovered in a septic tank at the home of the Applicant.
- 155 g) That in addition, I established that the sitting room of the applicant was freshly painted immediately after the disappearance of the deceased, and his seat covers in the sitting room also changed.
- h) That although a lot has been covered, other critical investigations of a highly scientific nature relating to the events at the scene (home) is still ongoing.
- 160 i) That I oppose the release of the applicant on bail on the following grounds.
- 165 1. Investigations into this case are still ongoing and we are in the process of ensuring their completion within the legal time frame. That the state should be accorded ample time to conclude the ongoing investigations without possible interference from the applicant.
 - 170 2. That most of the potential witnesses are persons under the care and authority of the applicant, such as children and employees of the applicant, over whom the applicant yields substantial authority. Therefore, there are high chances of interferences with investigations when released.
 - 175 3. That in the course of investigating this case, the CID Officers especially D/ASP Ochom Nobert and D/C Okello Jacob received numerous phone calls from various individuals in positions of authority purporting to be acting on behalf of the applicant influencing investigations to be done in a manner that favour the applicant.
 - 180 4. That these incidents of influence peddling by the agents of the applicant have been brought to the attention of police leadership and confidential investigations are being carried out in that regard.

- 185 5. That the investigators have since lived under immense threat of personal security and intimidation from persons claiming to act for and on behalf of the applicant.
- 190 6. On the 10/9/2021 one of the investigators in the case, D/C Obadia Hakiri attached to Kabalagala Police Station was mysteriously killed in a purported "road accident" along Jinja Road only for his body to be discovered dumped in the City Mortuary. The circumstance of his death is now under investigations vide Jinja Road TAR: 348/2021.
- 195 7. That there is a high likelihood of inference with witnesses by the accused/applicant if released. That on the 18/09/2021 while being escorted to SID Headquarters-Kireka, the applicant overtly and in the hearing of PC Ojok warned All not to disclose any information that concerns him and the case to the police. This information is still under probe at CID Headquarters.
- 200 8. That on reaching SID-Kireka on the same day, All was searched and found in possession of a suspicious powdered substance which upon inquiry he disclosed that it was given to him as medication for his ailment on instructions of the applicant with instructions to take it at night. Investigation into the component of this powered substance is still ongoing.
- 205 9. That the applicant is a flight risk. He was arrested upon intelligence information that he had planned to flee the country. Travel documents were retrieved from him indicating that he was en-route to Britain via Aga Khan Hospital-Nairobi. That there was no indication that he was referred to any medical facility in Britain.
- 210 10. That the applicant has other places of abode outside jurisdiction specifically Nairobi, Kenya with the potential of fleeing and living out of jurisdiction if released.
- 215 11. That part of the outstanding investigations relates to forensic expert analysis and examinations of different spots of scenes of crime which happens to be at the residential home of the applicant. If released will interfere with the conclusion of those examination.

(j) That the applicant is a very influential person in the security circles, he owns an armed security company (Pentagon Security Ltd)

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2.0 Representation

The Applicant is represented by M/s Ingura & Co. Advocates while the Respondent is represented by Mr. Jonathan Muwaganya, a Chief State Attorney from the Office of the Director of Public Prosecutions.

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3.0 ARGUMENTS BY THE PARTIES

3.1 The Applicant's Arguments

Counsel for the applicant started his submissions by stating the law on bail. He submitted that Article 23(6)(a) of the Constitution provides the right to apply for and be granted bail based on the discretion of the court handling the said application. The court has the discretion to set the conditions as it deems reasonable in the circumstances. That the right to bail is anchored on the principle of the right to a free and fair trial and the right to be presumed innocent until one is proved guilty or until he or she pleads guilty, as provided for in Article 28(1) and (3)(a) of the 1995 Constitution of the Republic of Uganda. See Constitutional Reference No. 20 of 2005, DPP vs Col (Rtd) Dr Kiiza Besigye. Regarding the merits of the application, Counsel for the Applicant submitted on the following grounds:

240 Exceptional Circumstances

Counsel submitted that Section 15 (3) of the Trial on Indictment Act Cap 23 provides for exceptional circumstances under which an accused person may be granted bail, which include Grave illness certified by a medical officer of the prison or other institution or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody, or infancy, or advanced age of the accused. For the applicant, counsel submitted that the Applicant satisfies the provisions of Section 15 (3) (a) and (c) of the Act above, given that the Medical Officer has certified that the accused's condition requires specialised treatment. He is also of advanced age being a person of 63 years old. Attached to the application is the Applicant's National Identity Card and a Medical Report marked Annexure "E", showing his date of birth and age. Also, See the case of Betty Kyambadde Vs Uganda HCT-01-CR-CA-10 OF 2003, where Her Lordship Ag.

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Lamecka N. Mukasa dealt with the issue of advanced, stating on page 3 of
255 her ruling that a person of 50 is advanced.

Counsel further argued that what amounts to exceptional circumstances is
provided for under section 15(3)(a)-(c) of the Trial on Indictment Act is not in
self exhaustive. The Legislature could not have envisaged in their minds that
those could be the only exceptional circumstances that an Applicant must
260 prove to the satisfaction of the court. That Court, therefore, has the
discretion to find any circumstance to be exceptional depending on the facts
of each case.

Furthermore, before the arrest of the Applicant, he had been referred to the
United Kingdom for specialized treatment, but because of the COVID-19
265 Pandemic, he could not readily travel due to travel bans to the United
Kingdom, as stated in paragraph 9 of his affidavit in support of the
application. As stated in paragraph 12 of the Applicant's affidavit, the
Applicant is the Chief Executive Officer of Pentagon Security, a company
employing over two thousand employees, which needs his presence for
270 effective management and running. Additionally, the Applicant is equally
the Managing Partner of Price & King and Audit Firm, where he is the Senior
Auditor and whose personal presence is highly required for its effective
management and survival, as stated in paragraph 13 of his affidavit
supporting the application. Counsel thus invited the court to find that those
275 exceptional circumstances warrant the applicant's release on bail.
Otherwise, should he eventually be found innocent, then he will have been
made to suffer irreparable damage, and his businesses will have been
destroyed.

280 **Fixed Place of Abode**

On this issue, Counsel for the applicant submitted that the Applicant, in
paragraph 18 of his affidavit, states that he has a fixed place of abode at
Munyonyo Mawanga Village, Buziga Parish, Makindye Division, Kampala
District, where he has a permanent home and where he was living with his
285 deceased wife and children. To prove this, the applicant attached a copy of
his national identity card, a copy of his passport, the certificate of title, and
a letter of introduction from his local council, which are attached to his
affidavit in support of the application.

290 **Substantial Sureties**

Counsel submitted that the Applicant has substantial sureties who are ready and willing to stand surety for him as evidenced in paragraph 17(a)-(d) of his affidavit in support of the application and Annexures "G", "H", "I" & "J" thereof. Counsel submitted that the sureties have fixed places of abode and
 295 have provided proof by attaching their National Identity Cards, Passports, Work Identity Cards, and letters of recommendation from their respective Local Councils and utility bills. For the applicant, counsel then prayed that the court be pleased to find the said sureties provided by the Applicant substantial for purposes of his bail.

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Other Considerations

The Applicant, in paragraphs 19, 20, and 21, states that he is ready and willing to abide by the conditions this honourable court will set, that he has no other criminal charges pending in any court against him and that he shall
 305 stay within the jurisdiction of this honourable court until court orders otherwise.

That remanding the applicant continuously without giving him a chance to be released on bail will suggest that he is guilty of the offence with which he is charged before he is proved guilty or he pleads guilty and that his family and
 310 business will have irreparably suffered if he remains in custody for the period of trial which he is not certain about now that he has not been committed to the High Court for trial. See Miscellaneous Application No. 20 of 2009, Hon. Akbar Godi vs Uganda, where Justice V.T. Zehurikize, while dealing with that application, cited the case of Kiiza Besigye already cited and Panju vs R on
 315 page 4 of the Ruling and in the last paragraph thereof, stated that "the overriding principle in a bail application is whether the accused person will turn up for his trial if released on bail."

That whereas the Applicant is charged with the offence of murder, which is a serious offence, the seriousness of the offence, however, should not be used
 320 as a ground to deny the Applicant bail. See the case of **Kiiza Besigye (supra)**, where the court held that "**the Applicant must be presumed innocent until proven** guilty or until he pleads guilty." In conclusion, he prayed that the application be granted and the applicant be released on bail pending his committal to the High Court and his eventual trial.

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3.2 Respondent's submissions

Mr. Jonathan Mwanganya, the Chief State Attorney who represented the Director of Public Prosecutions, strongly opposed the bail application. The grounds of opposition are-

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3.2.1 Bail is discretionary

In his opening statements, the Respondent submitted that although the applicant has a right to apply for bail under articles 23(6) and 23(3) of the Constitution, the grant of bail is discretionary under section 14 of the Trial on Indictment Act. That an applicant can only be released on bail if he or she proves to the satisfaction of the court that exceptional circumstances exist to warrant their release on bail. He then referred the court to conditions for the grant of bail, which include the following -

- a) The nature and seriousness of the offence.
- 340 b) The character of the evidence; the circumstances which are peculiar to the accused.
- c) A reasonable possibility of the presence of the accused not being secured at his trial.
- d) Reasonable apprehension of the witnesses being tampered with; and
- 345 e) The larger interests of the public or the state and other similar factors which may be relevant to the facts of the case
- f) Prima facie or reasonable grounds that the applicant must have committed the offence.
- g) The nature and gravity of the offence coupled with the severity of the sentence.
- 350 h) The applicant may commit similar offences, tamper with witnesses, or thwart the course of justice. See: Kapasi Fred and Tushabe Florence Kapasi vs. Uganda HCT-05-CR-CMA -108-2019.

3.2.2 Proof of exceptional circumstance under section 15(3) of the Trial on Indictment Act

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Counsel submitted that although the applicant claims to be suffering from chronic prostatitis and prostate cancer, the evidence presented does not meet the requirements of grave illness as defined in section 15(3)(a) of the Trial on Indictment Act. He submitted that section 15(3) of the Trial on Indictment Act requires a medical officer in the prison where the applicant is held to certify that his illness is incapable of being treated and managed by the prison's medical facilities, which was not done in this case. Instead, the applicant presented medical documents authored by Dr. Vincent K

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365 Karuhanga of Friends Poly Clinic on 1st September 2021, showing that the applicant was examined prior to his arrest and incarceration on 22nd September 2021.

370 Counsel submitted that the diseases the applicant is suffering from are not of a grave nature. He said that whereas the applicant claims to be suffering from nocturia, this disease is not grave. He referred me to an online medical dictionary that defines nocturia as frequent nighttime urination caused either by drinking too many liquids prior to bedtime or old age, which, in his opinion, is not a serious disease.

375 On the second disease, prostatitis, counsel submitted that it is not a grave illness. He said that prostatitis refers to inflammation of the prostate gland, which is caused by infection of the prostate. While the doctor says that the presence of the inflammation is indicative of prostate cancer, there is no proof that the applicant suffers from cancer.

380 The medical examination carried out by Dr Alex Kakoraki, the Medical Superintendent of Prisons, is at variance with the report of the applicant's private doctors. According to Dr. Kakoraki, the applicant complained of chest pains, palpitations, occasional body weakness, lower abdominal pain, and dysuria. The report is silent on whether these medical conditions cannot be managed in the Prison Medical facilities. In conclusion, counsel submitted that, in light of the gaps in the applicant's medical records, he had failed to
385 prove the exceptional circumstance of medical illness under section 15(3) of the Trial on Indictment Act.

3.2.3 Interference with the Investigations

390 Counsel submitted that the applicant is likely to interfere with the investigations in the case and that bail should be denied to enable the prosecution and police to complete the investigations.

395 He submitted that there is a real possibility that the applicant may influence or interfere with potential witnesses who are either close relatives or persons over whom the applicant wields influence or are his employees. That the applicant is an influential person in security circles and therefore has the capacity to interfere with the investigations. Furthermore, counsel submitted that the applicant is likely to interfere with forensic investigations taking place at his residence, which is the scene of the crime if he is released on bail at this point.

400 Relatedly, counsel submitted that the applicant is an influential person in security circles who has the potential to interfere with the investigation, as demonstrated in paragraphs 10 (c)—(g) of the affidavit in opposition to bail.

3.2.4 Applicant is likely to abscond

405 Counsel submitted that the applicant is a flight risk, likely to abscond if released on bail. Counsel referred to paragraph 5 of the affidavit in opposition to bail, where the applicant was arrested in the process of fleeing the country to the United Kingdom through Kenya, yet he had been instructed by police authorities not to leave the country. In addition, the
410 applicant has other places of abode outside the jurisdiction of the country, which he has not disclosed to the court.

3.2.5 Public Policy and interest is against granting the applicant bail

415 Counsel submitted that public interest demands that the applicant is not released on bail as there is reasonable suspicion that he could have committed the offence. He referred me to the case of **Abindi Ronald vs. Uganda High Court Criminal Application No. 0020 of 2016**, where the court observed that in deciding whether to grant or deny bail, the court
420 should balance the applicant's rights to personal liberty with protecting the administration of justice.

3.2.6 Applicant's sureties are not substantial

425 Lastly, counsel submitted that the sureties presented by the applicant are not substantial. Firstly, he submitted that Dr Jennifer Rose, a younger sister to the applicant, is not in a position to guarantee the applicant's continued attendance in court as it is not in her interest for her brother to face trial. Regarding Robert Mukasa, counsel submitted that he is an applicant's employee who lacks the capacity to compel him to attend court. Achellu
430 Pascal, a tribemate of the applicant, does not have strong connections with him. He said that this surety did not produce original identification documents and that his letter of introduction by the LCI Chairperson was addressed to the Chief Magistrates Court at Buganda Road instead of the High Court. Lastly, counsel doubted the ability of Igwoko John Francis, whom

435 he described as being disabled, to physically compel the applicant to attend court. He also submitted that he is unemployed and, therefore, lacks the financial ability to honour the bond should the applicant abscond.

3.3.0 Applicant's submissions in Rejoinder

440 The applicant reiterated his grounds to be released on bail but specifically in response to the respondent's grounds of opposition stated as follows-

3.3.1 The Applicant will not interfere with the investigations

445 Counsel disputed allegations by the Respondent that the applicant will interfere with ongoing investigations, interfere with witnesses, or abscond if granted bail are unsubstantiated and based on mere allegations. The applicant referred me to Uganda (DPP) vs Col. Kiiza Besigye Constitutional Reference No. 20 of 2005, where the court observed that accused persons should not be denied bail on mere allegations that they will interfere with investigations without cogent evidence.

450 There is no evidence that the applicant is a violent man who is likely to threaten or interfere with the witnesses, and in any case, most of the witnesses are either his children or employees whose particulars are not known to the applicant.

455 He invited the court to treat allegations of the applicant interfering with witnesses as mere allegations incapable of being believed. He referred me to the case of Akbar Godi vs. Uganda High Court Misc. Application no 20 of 2009.

3.3.2 The Applicant is not a flight risk

460 Counsel submitted that allegations that the applicant intends to abscond are baseless because the applicant religiously observed the conditions of his police bond without any violations. He submitted that it was surprising that the very D/ASP Ochom Nobert, who granted the applicant police bond, was now the one peddling lies that the applicant was a flight risk.

3.3.3 The Applicant suffers from Grave illness

465 Regarding the medical reports submitted by the applicant, counsel conceded that the report by Dr. Karuhanga of Friends Polly Clinic was made before the applicant was incarcerated and that its relevance is to show that the applicant had a preexisting condition prior to his arrest.

470 The Respondent, who is not a medical expert, cannot, in the absence of alternative medical attention, dispute that the applicant is suffering from nocturia and prostatitis, diseases that medical facilities in the Prison cannot effectively handle. That according to the applicant's medical doctor, the applicant requires specialised medical attention in Aga Khan University to review and attend to medical condition.

475 Regarding Dr Alex Kakoraki's medical report, counsel submitted that the doctor indicated in his report that the applicant suffers from chronic conditions that require specialised treatment, which is enough to show that the applicant's conditions cannot be effectively managed in prison.

3.3.4 The Applicant will not abscond

480 Regarding the allegations that the applicant intended to flee to the United Kingdom, counsel informed the court that the applicant had initially been referred to the United Kingdom. Still, when the COVID pandemic struck, his doctor referred him to Agha Khan Hospital in Nairobi.

3.3.5 Public Policy and interest is not against granting the applicant bail

485 On the issue of denying the applicant bail on public policy issues, counsel submitted that the Respondent had failed to bring evidence to back up its claims. Counsel referred me to the case of **Uganda (DPP) vs. Col. Kiiza Besigye (supra)**, where the court observed that:

490 *Bail should not be refused mechanically simply because the state wants such orders. That the refusal to grant bail should not be based on mere allegations, the grounds must be substantiated. The remanding of a person in custody is a judicial act and as such, the court should summon its judicial mind to bear on the matter before depriving the Applicants of their liberty.*

3.3.6 The Applicant's Sureties are Substantial

495 Lastly, regarding the sureties, counsel submitted that Dr Jennipher Rose Aduwo, a young sister of the applicant, can compel the brother to attend court. She is also a person of impeccable integrity who can be relied upon by the court. Mr. Robert Mukasa is a colleague and partner in the same firm
500 as the applicant and can stand as a surety. Regarding Mr Achellu Pascal, counsel told the court he is a Lead Accounts Officer with GP Global. A copy of his work identity card and land title was presented in court to support his substantiality. Lastly, Mr. Igwoku John, though disabled, can compel the

applicant to attend court. He has a fixed place of abode and owns rentals
505 from which he derives an income.

4.0 CONSIDERATION OF THE BAIL APPLICATION

4.1 Legal framework governing the grant of bail

Article 23(6) of the Constitution guarantees the right of every accused
510 person, like the applicant, to apply for bail. The right to bail is founded on the
presumption of innocence in Article 28(3)(a) of the Constitution, the right to
personal liberty in Article 23 of the Constitution and the right to a fair trial
(be given adequate time and facilities for the preparation of his or her
defence) which is protected in article 28(3) (c) of the Constitution. By its
515 nature, bail is intended to enable an accused person to prepare his defence,
which includes finding relevant witnesses, marshalling resources to engage
counsel, and having the freedom to conduct one's defence without the
shackles of prison. An accused person who is on bail is more or less placed
on the same pedestal of equality, which is given to the prosecution to
conduct its case against the accused person consistent with the principle of
520 equality of all before the law, which is protected under article 21(1) of the
Constitution.

Bail is, however, discretionary because Article 23(6) (a) of the Constitution
gives the court powers to release an accused person on bail on such terms
as it considers reasonable. Section 14 of the Trial on Indictment Act
525 emphasises the discretionary nature of bail. For ease of reference, section 14
(1) of the Trial on Indictment Act provides that-

*The High Court may at any stage in the proceedings release the accused
person on bail, that is to say, on taking from him or her a recognizance
consisting of a bond, with or without sureties, for such an amount as is
530 reasonable in the circumstances of the case, to appear before the court on
such a date and at such time as is named in the bond.*

However, the court is required to exercise its discretion judiciously in
deciding whether to grant or deny bail. The Court is also obliged to consider
the four fundamental rights that inform the right to apply for bail. These
535 rights are the right to be presumed innocent, personal liberty, a fair trial, and
equal protection of the law in Article 21(1) of the Constitution. Given that
the exercise of discretion to either deny or grant bail involves limitation of
the rights, article 43(2) (c) of the Constitution obliges the court to impose
such limitations that are permissible and consistent with what is allowed in a

540 free and democratic society. For ease of reference, article 43(2) (c) of the
Constitution provides that-

Public interest under this article shall not permit -

545 *(c) any limitation of the enjoyment of the rights and freedoms prescribed by
this Chapter beyond what is acceptable and demonstrably justifiable in a free
and democratic society or what is provided in this Constitution.*

The import of the above legal provisions is that bail should only be denied for
good reasons, and the reasons must be proportionate to the accused's right
to liberty that is being limited. For this reason, the court in Constitutional
Reference No. 20 of 2005, DPP VS COL (RTD) DR. KIIZA BESIGYE, emphasised
550 that bail should not simply be mechanically denied. Likewise, in **Panju V
Republic (1973) E.A 282** where it was held that-

*if courts are simply to act on allegations, fears, or suspicions, then the sky is
the limit and one can envisage no occasions when bail would be granted
whenever such allegations are made."*

555 The point to take home is that a prosecutor who wishes to object to bail must
have cogent evidence instead of depending on bare-thread allegations.

4.2 Conditions for grant of bail

The conditions for granting bail have evolved over the last many years and
are more or less settled. According to section 14(1) of the Trial on Indictment
560 Act, the court may release an accused person on bail if it is satisfied that the
accused person will not abscond when granted bail and in the case of an
accused person who is charged with a capital offense, that exceptional
circumstances exist to warrant his or her release on bail. According to
section 15 of the Trial on Indictment Act, exceptional circumstances include
565 infancy, advanced age, grave illness, and a certificate of no objection from
the Director of Public Prosecutions. There is, however, a rider to exceptional
circumstances because following the promulgation of the 1995 Constitution
and the decision of the Supreme Court in **Attorney General vs Joseph
Tumushabe, Constitutional Appeal Number 3 of 2005 (SC)**, it is no
570 longer necessary for the applicant to prove exceptional circumstances before
they can be granted bail. See also: Foundation for **Human Rights Initiative
vs. Attorney General, Constitutional Petition No. 20 of 2006**, where
the court observed that, *"the provisions of section 15 of the Trial on
Indictment Act were only regulatory and did not know take away the
575 discretion of the court to grant bail in deserving circumstances."*

Be that as it may, an accused person who establishes exceptional circumstances stands a better chance of being granted bail if he or she can satisfy the court that they will not abscond or prejudice the administration of justice if granted bail. See: **Nyanzi Yusuf Siraj Vs Uganda Criminal Misc. Appl. No. 134 Of 2021**

Therefore, the key considerations for granting bail are mainly whether the applicant will not abscond if granted bail and whether it is in the interest of justice to grant bail. Under the last limb, the court covers matters that have a bearing on the administration of justice if the applicant is granted bail. These matters include the possibility of the applicant interfering with investigations, the witnesses and victims, public safety, and whether the grant of bail would take away public confidence in the administration of justice. Here, the court must balance the applicant's right to liberty and presumption of innocence against the needs of the public for safety and to live in a crime-free environment. Justice Kwesiga in **Criminal Misc. Application No. 25 of 2017- Moaza Kromar vs. Uganda**, observed that-

Article 23(6) of the Constitution of Uganda provides that a person whose liberty has been deprived by imprisonment before trial or when not serving a sentence be free to apply for bail. However, in exercising the discretion to grant or not to grant bail, all interests of justice of the Applicant, the Respondent, and the society as a whole ought to be given adequate and appropriate consideration.

In the case of **Kanyamunyu Mathew Muyogoma vs Uganda Misc. Criminal Application No. 177 of 2017**, Justice Wilson Kwesiga again observed that the paramount factors to consider when exercising discretion to grant bail are mainly the following:

Protection of interests of justice by ruling out interference with the course of justice, e.g., if the applicant is granted bail, will he interfere with investigations, for instance, will he make it difficult for recovery of exhibits or preservation of a scene of crime essential for the trial review?

I will now consider the merits of the application.

4.3 Merits of the Application

The gist of the accused 's application for bail is founded on the following ground- that he has a right to apply for bail, that he is presumed innocent, that he is entitled to personal liberty, that he will not abscond and lastly that he is suffering from grave illness and is of advanced age. On the other hand,

the Respondent is opposed to the Applicant being released on bail because he has not proved exceptional circumstances, is a flight risk, will interfere with the investigation, does not have substantial sureties and is not in the public interest to release him on bail. I will now consider each of these considerations in the context of the law governing bail, which I set out above, starting with whether the applicant has proved exceptional circumstances to justify being released on bail.

4.3.1 Proof of Exceptional Circumstances

The applicant contends that he is an old man aged 63 years and that he suffers from prostatitis and hypertensive disease of the heart, which he claims are grave illnesses within the meaning of section 15(3)(1) of the Trial on Indictment Act.

The Respondent, on the other hand, strongly contested the fact that the applicant is suffering from grave illnesses that the Prison Authorities cannot manage. He submitted that although Dr Karokari, the Medical Officer for the Prisons who examined the applicant, found that he was suffering from chronic prostatitis, he never issued a certificate that the applicant could not be managed in the Prison's medical facilities.

The Respondent also took exception to the medical report authored by Dr. Karuhanga. He submitted that the report is inadmissible because it was authored before the applicant was incarcerated and secondly that Dr Karuhanga, is not in charge of the applicant in prison.

The key issues that emanate from the arguments of the parties are as follows-

- Whether the applicant, who is 63 years old and suffering from chronic prostatitis and hypertensive heart disease, has satisfied the requirements of Section 15(3)(1) of the Trial on Indictment Act regarding proof of exceptional circumstances.
- Whether the medical report authored by Dr. Karuhanga is admissible for purposes of section 15(3) (1) of the Trial on Indictment Act.

Is Dr. Karuhanga's letter admissible? Section 15(3)(1) of the Trial on Indictment Act provides that -

Notwithstanding section 14, the court may refuse to grant bail to a person accused of an offense specified in subsection (2) if he or she does prove to the satisfaction of court -

1. *That exceptional circumstances exist justifying his or her release on bail; and*
2. *That he or she will abscond when released on bail.*

650 Section 15(3) of the Trial on Indictment Act provides that-

In this section, "exceptional circumstances" means any of the following -

1. *grave illness certified by a medical officer of the prison or other institution or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody.*
- 655 2. *A certificate of no objection signed by the Director of Public Prosecutions; or*
3. *The infancy or advanced age of the accused.*

From the reading of section 15(3)(1) of the Trial on Indictment Act, the only medical officer authorised to examine an accused person for securing bail under exceptional circumstances is a medical officer of the prison or place where the accused person is detained. Dr Karuhanga is on record for examining the applicant at his clinic a day before his arrest and incarceration. The applicant was then a free man. Dr Karuhanga's clinic is neither a place of detention nor a place that has previously served as a legal detention centre for the applicant. That being the case, Dr Karuhanga examined the applicant outside section 15(3)(1) of the Trial on Indictment Act; therefore, his medical report is inadmissible for this bail application.

4.3.2 Proof of Exceptional Circumstances

The applicant raised two exceptional grounds in support of being released on bail, namely that he is of advanced age and suffers from grave illness.

Regarding age, the medical report issued by the prison authorities indicates that the applicant is 63 years old. I saw the applicant in court; indeed, he is an old man in his sixties. In the absence of contrary evidence from the Respondent, this court is satisfied that the applicant is 63 years old. The court has observed in several cases that advanced age for purposes of section 15(3) of the Trial on Indictment Act is 45 years. See Betty Kyambadde Vs Uganda HCT-01-CR-CA-10 OF 2003, where Justice Lamecka N. Mukasa (Ag. J, as he then was) said that a person of 50 years is of advanced age. The applicant is 63 years old and, therefore, falls within the category of advanced age within the meaning of section 15(3) of the Trial on Indictment Act.

4.3.3 Proof of Grave Illness

Section 15 (3) (1) of the Trial on Indictment Act defines grave illness as such illness that is incapable of adequate medical treatment in prison. Two
 685 phrases merit consideration in this section, i.e., adequate and medical
 treatment. According to the Cambridge English dictionary, the word
 adequate means 'enough or satisfactory for a particular purpose'.
 (dictionary.cambridge.org). The phrase 'medical treatment means' - the
 management and care of a patient to combat disease or disorder.
 690 (Wisconsin.edu)

In determining whether an illness is grave, the court must be satisfied that
 the prison's medical facilities cannot treat or manage the accused's illness
 with positive outcomes consistent with existing medical standards. In
 assessing whether the medical facilities in prison are adequate, the court
 695 must examine the efficacy of the functionality of the facility to manage or
 combat a disease that the accused is reported to be suffering from. Where,
 for example, medical facilities exist, it is important to establish whether the
 facilities have the right personnel, medicine, equipment, and facilities to
 treat the accused's illness with reasonably positive outcomes. If this question
 700 is answered in the affirmative, then the illness is not grave, and the reverse
 is true if the question is answered in the negative.

According to Dr. Kakoraki's report, the Ag. Medical Superintendent of
 Murchison Bay Hospital dated 17th November 2021, the applicant is
 described as a known case of hypertensive heart disease and chronic
 705 prostatitis for eight years. Dr. Kakoraki, in his conclusion, observed that the
 applicant suffers from chronic health conditions that require specialised
 treatment.

The Respondent submitted that chronic prostatitis is not a grave illness that
 the Prison's medical facilities cannot manage. He referred the court to an
 710 online medical dictionary that defines prostatitis as an inflammation of the
 prostate gland, which he observed is not the same thing as having prostate
 cancer. The Applicant's counsel submitted that what makes the disease
 grave is the chronic nature of the medical condition, which the applicant has
 been suffering from for the last eight years. I do not doubt that the applicant
 715 is suffering from prostatitis, a medical condition that involves the
 inflammation of the prostate. The Mayo Clinic defines prostatitis as

*As swelling and inflammation of the prostate gland, a walnut sized gland
 situated directly below the bladder in men... Prostatitis often causes painful*

720 *or difficult urination. Other symptoms include pain in the groin, pelvic area, or genitals and sometimes flu like symptoms...Depending on the cause, prostatitis can come on gradually or suddenly. it might improve quickly, either on its own or with treatment. Some prostatitis last for months or keep recurring (chronic prostatitis).*

725 The same authors say *that there is no direct evidence that prostatitis can lead to prostate cancer. The condition can be managed by antibiotics, alpha blockers, and anti-inflammatory agents. See: mayoclinic.org*

730 Based on my consideration of the medical literature above, I am not convinced that the prison's medical facilities are incapable of handling prostatitis. This disease can be managed with medicines available in most public hospitals or assessed from Pharmacies in the country. The situation would have been different if the applicant was at serious risk of developing prostate cancer, which would require more specialised treatment outside the prison's medical facilities.

735 I will deal with the second disease of hypertensive heart disease, which the applicant is said to be suffering from. The Respondent never addressed the court on this disease. Available literature says a hypertensive heart disease-
740 *refers to a heart condition caused by high blood pressure...Hypertensive heart disease includes heart failure, thickening of the heart muscle, coronary artery disease, and other conditions. Hypertensive heart disease can cause serious health problems. It's the leading cause of death from high blood pressure. (See: healthline.com)*

745 The applicant is suffering from hypertensive heart disease, as per the medical report of Dr. Korakire. Medical literature that I have referred to describes it as the leading cause of death from high blood pressure. In Uganda, the treatment of heart disease is a developing discipline managed largely by the Heart Institute in Mulago Hospital. The Institute does not have branches within the Prison's medical facilities, and therefore, the prisons do not have the capacity to deal with the disease. This is why Dr Kakoraki, in his report, told the court that the applicant requires specialised medical facilities
750 outside the prison. Although the doctor fell short of certifying that the applicant's case cannot be managed from the Prison's medical facilities, I take the spirit of his medical report to say the same. In view of this, I am satisfied that the applicant is suffering from a grave illness that cannot be adequately managed by the Prison's medical facilities in line with section
755 15(3) of the Trial on Indictment Act.

4.3.4 Other Consideration for grant of bail

Despite the applicant establishing exceptional circumstances, he can only be granted bail if he satisfies the court that he will not abscond and that the grant will not prejudice public interest and the administration of justice.

760 4.3.5 Is the applicant a flight risk?

The Respondent strongly opposed the applicant's bail application because he is a flight risk and will abscond if granted bail. The major points of contention were that the police authorities stopped or intercepted the applicant on his way to London despite being asked not to leave the country. The Respondent also told the court that the applicant has several places of abode within and without the jurisdiction of the court, which he has not notified the court about. Lastly, the respondent told the court that given the seriousness of the offence and severity of the sentence, if the applicant is convicted, the temptation to escape the long arm of the law is very high. The Applicant told the court that he has no intentions of escaping given that he religiously attended to his police bond during the investigations of this case and that he is a reputable and responsible citizen willing to observe bail conditions if his application is successful.

Section 15(4) of the Trial on Indictment Act provides that-

775 *In considering whether or not the accused is likely to abscond, the court may take into account the following factors-*

1. *Whether the accused has a fixed place of abode within the jurisdiction of the court or is ordinarily resident outside Uganda.*
- 780 2. *Whether the accused has sound sureties within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail.*
3. *Whether the accused has on a previous occasion when released on bail failed to comply with the conditions of his or her bail; and*
4. *Whether there are other pending charges against the accused.*

785 I have reviewed the evidence on record regarding the applicant. according to the affidavit sworn by DASP Ochom the investigating officer in this case. DASP Ochom, in his affidavit, deponed that before his arrest, the applicant was instructed by the police not to leave Kampala without authorisation. In utter disregard of the instructions, the applicant attempted to flee to London. 790 The relevant part of DASP Ochom's affidavit states as follows-

- 795 a) *That upon taking over the investigations by CID Headquarters, the applicant was summoned, placed on watch list, and instructed not to move outside Kampala without the express permission of the investigators, as facts regarding the alleged disappearance cum murder of the deceased were being established.*
- b) *That in the course of investigations, I received reliable intelligence that the applicant was planning to secretly exit the country to London, United Kingdom via Nairobi, Kenya on purported medical grounds without adherence to the issued instructions by the investigators.*
- 800 c) *That the accused/applicant was immediately arrested on 6th September 2021 and upon interrogation, he admitted to have been in the process of travelling to United Kingdom, via Nairobi.*

805 The applicant, on his part, did not offer any explanation to the allegations of the Respondent apart from telling the court through his advocate from the Bar that his trip to London had been prior arranged, but due to the COVID pandemic, he was advised to go to Nairobi. Even if that were the case, I would have expected the applicant, who for all accounts is a respectable man, judging from very important positions in this country, to have informed the Police Authorities that he was going abroad for treatment.

810 It cannot be overemphasised that the applicant's duty to disclose his travel movements was made more urgent, given that he was both a complainant and a suspect in the disappearance of his wife. His cooperation and presence were a must rather than an exception. The fact that the applicant chose to arrange to travel without notifying the police authorities tells a lot

815 about his level of integrity as far as this case is concerned.

I cannot over-emphasise the importance of trust as far as bail is concerned because bail is largely based on trust that the applicant will comply with the court's orders. Bail will either not be granted or made more difficult when this trust is broken. I am also mindful that there is always a high temptation

820 for suspects charged with capital offences to abscond for fear of the consequences that may follow if they are convicted. See **Tigawalana Bakali Ikoba v Uganda - Criminal Application No. 23 of 2003** and **Obey Christopher and Others v Uganda, Miscellaneous Application No. 045,046, and 047 of 2017**. Thus, the court is always reluctant to grant

825 bail if there is a reasonable probability that the accused or the applicant, in this case, may escape. In this case, the applicant's conduct before his arrest in attempting to exit the jurisdiction of this country is a red flag that is suggestive that the applicant is a flight risk should he be granted bail. In line

830 with the decisions of the court in **Tigawalana Bakali Ikoba v Uganda - Criminal Application No. 23 of 2003** and **Obey Christopher and Others v Uganda, Miscellaneous Application No. 045,046, and 047 of 2017 at page 6**, where the gravity of the offence and severity of sentence was invoked to deny bail as chances of the applicant escaping or absconding were very high, I am inclined to believe the prosecution that
835 there are high chances that the applicant will abscond if granted bail.

4.3.6 Whether the applicant has substantial sureties

The applicant presented four sureties to guarantee his continued attendance at the court until the case was completed. Sureties must be substantial to guarantee the accused's continued attendance in court should he be granted
840 bail. In the case of Yasin Siraj Nyanzi vs Uganda, I observed that:

Sureties must be persons of good standing in society and substantial. According to Justice Benjamin Odoki, in his Book, **A Guide to Criminal Procedure in Uganda (2011)**, on page 116, *"the court should inquire into the worth and social status of the sureties whether they are substantial or
845 not"*. In other words, the court must be satisfied that the sureties have the capacity to pay the bond sum should the accused person abscond.

The sureties are Dr. Jenipher Rose Aduwo, the applicant's young sister. She is also a person of impeccable integrity who can be relied upon by the court and has a fixed place of abode. The second surety is Mr Robert Mukasa, a
850 colleague and a partner in the same firm as the applicant. He has a fixed place of abode. The third surety is Mr Achellu Pascal, a Lead Accounts Officer with GP Global. He presented a copy of his work identity card, and the land title was presented in court to support his substantiality. Lastly, Mr. Igwoku John is disabled but has a fixed place of abode and owns rentals
855 from which he derives an income.

I have reviewed the sureties presented by the applicant. Dr. Jennipher Rose Aduwo, Mr. Robert Mukasa, and Mr. Igwoku John are persons of integrity, have fixed places of abode and, besides, are propertied citizens with titled
860 land. They are all employed except the last surety, who derives sustenance from rental income. I do not accept the Respondent's assertions that the sureties cannot compel the applicant to attend court. The sureties have lives of their own and, despite being connected to the applicant, are interested in ensuring that the applicant does not abscond. I am sure they fear repercussions that may follow if the applicant absconds.

865 Before taking leave in this matter, I would like to take exception to the
Respondent's view that a disabled person cannot stand surety for an
accused. A disabled person has all the rights and privileges of an able-
bodied person and can stand surety for an accused person. What is
important is that he or she has the capacity or authority to compel the
870 applicant to comply with the court's orders.

4.3.7 Will the applicant interfere with the investigations?

The applicant submitted that he does not have the capacity to interfere with
the witnesses and the investigations. On the other hand, the Respondent
submitted that investigations in the case against the applicant are still
875 ongoing. He drew the attention of the court to the following critical aspects
of the case-

- That the investigations are forensic in nature and require painstaking
examination of the scene of crime which, is the applicant's home.
- That some of the witnesses are either close relatives or workers of the
880 applicant.
- That the applicant is an influential person in security circles and is
likely to interfere with the witnesses.
- That some of the witnesses in this matter have been threatened or
harmed. The Respondent referred to D/C Obadia Hakiri, an
885 investigating officer attached to Kabalagala Police Station, who lost his
life in unexplained circumstances shortly after recovering evidence
from the scene of the crime.

The applicant dismissed all these allegations as unsubstantiated and only
intended to defeat his bail application.

890 In matters of bail, there is always fear that the applicant may interfere with
the investigations if they are released on bail. In some cases, the fears may
be well-founded. For example, in **Dr Ismail Kalule & Others V Uganda
(High Court Criminal Application No. 57, 58, 59, 60 and 61 of 2010)**,
the court stated that-

895 *there may well be instances where fears or suspicions expressed by the
state are very much in the public domain; and which the court may have to
take judicial notice of.*

But it is also true that sometimes the fears of the prosecution may be
unfounded and simply paranoid. In such a case, the court must draw

900 inspiration from the case of Panju **V Republic (1973) E. A 282** where it was held that-

if courts are simply to act on allegations, fears, or suspicions, then the sky is the limit and one can envisage no occasions when bail would be granted whenever such allegations are made.

905 The prosecution must have credible evidence to prove that the applicant will interfere with the investigations before the court can deny the bail application.

After reviewing the materials, evidence, and facts before the case, I am satisfied those investigations in this case are complex in nature given the
910 circumstances under which the deceased person in this case was killed and ultimately hidden within the premises of the applicant. The applicant's home, which is being treated as a scene of crime, may hold clues as to who killed the deceased. According to the prosecution, examination of the scene of the crime, which involves forensics, may take time; therefore, securing it
915 for the time being is important for all, including the applicant, who has maintained his innocence.

I am also mindful that since the crime scene is the applicant's home, persons who may turn out to be witnesses will either be related or closely associated with the applicant. Therefore, the temptation for the applicant to
920 influence them before the investigations are completed cannot be ruled out. Additionally, I cannot brush aside the threats that law enforcement officers have been exposed to, such as D/C Obadia Hakiri, a police officer, who lost his life shortly after collecting possible evidential materials from the scene of the crime. In view of these dangers and unanswered questions, it is better
925 to be cautious and believe the Respondent that the threats of the applicant interfering with the investigations or witnesses are not far-fetched.

5.0 Should the applicant be granted bail?

The grant of bail is discretionary upon the applicant, satisfying the court that he will neither abscond nor interfere with the investigations if he is
930 released on bail. In this case, the applicant has failed to satisfy the court that he will not abscond if released on bail. Secondly, the chances of the applicant interfering with the investigations and the witnesses, given the proximity of the crime scene and witnesses to the applicant, are high and real. Therefore, even though the applicant has proven exceptional
935 circumstances and has substantial sureties, it is not in the interest of justice

940 to grant the applicant bail now, as releasing him will undermine the
administration of justice. Public interest demands that the prosecution is
given more time to complete its investigations before the applicant can be
considered for bail in addition to the applicant presenting sufficient
guarantees that he is not a flight risk.

6.0 Decision

945 The application for bail is dismissed because the applicant has failed to
assure the court that he will not abscond and interfere with the
investigations if released on bail. Equally, the application has failed because
granting bail to the applicant will prejudice the public interest and the
administration of justice. It is so ordered.



950 Gadenya Paul Wolimbwa
JUDGE
5th January 2022.

I request the Deputy Registrar of the Criminal Division to deliver this ruling
on my behalf on 6th January 2022.

955



Gadenya Paul Wolimbwa
JUDGE
5th January 2022.

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