

(Arising from Crim. Case No.103 of 2021)

Before: Hon. Justice Byaruhanga Jesse Rugyema

[1] The Applicant **Nyangoma Flavia** filed this application by Notice of Motion under **Article 28(3) (a), 23(6) of the Constitution of Uganda, SS.14 & 15 TIA** and other relevant laws for bail pending trial.

[2] The application is premised on the grounds contained in the affidavit of the Applicant in support of the application. In summary, they are as follows;

- 1. The Applicant, female aged 24 years is charged with the offence of murder C/ss 188 & 189 PCA and was remanded in Hoima Government prison in November 2021.*
- 2. That to date, no further steps have since her remand been taken to have her tried and to have the case against her disposed off.*
- 3. That she has a fixed place of abode within the jurisdiction of this court.*
- 4. That she has substantial sureties with a good social background who will undertake that she complies with the conditions of bail that may be granted herein.*
- 5. That she is innocent of the charge of murder, her arrest and detention have affected and prevented her from pursuing her academic dream as a student and she has never been previously convicted of a crime and therefore no other charges are pending against her.*

[3] Counsel for the Applicant **Ms. Ajok Harriet** submitted that the Applicant was arrested by police in Nov.2021, charged with murder and

was remanded by Hoima Government prison on 12/11/2021 to date. She is not yet committed to the High Court and it is not known when she is to be tried.

- [4] Counsel further submitted and argued that **Article 28(3) (a) of the Constitution** as amended provides that every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty or until that person has pleaded guilty.
- [5] Further that **Article 23(6) (a) of the Constitution** provides that every person arrested in respect of a criminal offence is entitled to apply to the court to be released on bail and the court may grant that person bail on such conditions as the court considers reasonable.
- [6] In this case, counsel contended that the Applicant was a student drop out who had made some money and was ready to return to school in 2022 upon schools opening after the lock down due to COVID 19. A copy of her Uganda Certificate of Education was attached.
- [7] The court's discretionary powers to grant bail are enshrined under **S.14 (1) of the TIA**. However, the right to bail is a fundamental right guaranteed by **Article 23(6) of the 1995 Constitution of the Republic of Uganda**. Its basis is found in **Article 28** of the same **Constitution** which states that an accused person is to be presumed innocent until he or she is proved or he or she pleads guilty.
Under **Article 23(6) of the Constitution as amended by the Constitutional amendment Act No.11/2005;**

“Where a person is arrested in respect of a criminal offence,

(a) ...

(b) ...

*(c) In the case of an offence triable only by the High Court, that person has been remanded in custody for **one hundred and eighty day before the case is committed to the High Court, that person shall be released on bail on such conditions as the court considers reasonable.**” (Emphasis)*

In Foundation for Human Rights Initiative Vs A.G, S.C Constitutional Appeal No.03/2009, Katureebe, C.J (As he was then) held that,

*“When an accused person applies for bail, the court retains the discretion whether or not to grant bail to the accused person which discretion has to be exercised judiciously. The only time when the court has no discretion is where a person has been on remand for the period stipulated in Article 23(6) (b) or **23 (6) (c) supra**. In those situations, the court shall grant bail but retains the*

power to determine the conditions upon which the bail is granted.”

- [8] In the instant case, the Applicant and 7 Others were charged with the offence of murder of a one **Magoola Joseph C/ss 188 and 189 PCA**. Under **S.161 MCA**, murder is an offence triable only by the High Court for it carries a maximum sentence of death. It is the submission of counsel for the Applicant that the Applicant and the 7 Others were remanded in prison on **12/11/21** and therefore clocked the mandatory period of remand and since they are not being committed to the High Court for trial, they be granted bail pending trial.
- [9] On 15/6/22 when the Applicant's bail was in court for hearing, counsel for the Applicant complained that despite the Applicant and other 7 accused persons clocking the mandatory remand period, the Magistrate declined and or refused to release them on bail as mandated by **Article 23 (6) (c) of the Constitution** and **S.76 MCA**.
- [10] **State Attorney Nakaggwa** for the Respondent did not dispute the fact that indeed, the Applicant and 7 other accused persons had clocked the mandatory **180 days** on remand period before their case is committed to the High Court. She only intimated that the police file was with **Ms. Akello**, the Regional Director of Public Prosecution. Court however required and urged her to have the Applicant and the co-accused persons committed to the High Court for trial if there is evidence to warrant committal, as this court waited for the lower court file for proof that the Applicant and the 7 others have indeed clocked the mandatory period on remand.
- [11] I have perused the lower court file copies of the Remand warrants of the Applicant and 7 others therein. The Remand warrants are to the effect that the accused persons were first remanded in prison on **12th/11/2021** save for **Kato Francis (A8)** who was released on bail on account of being a juvenile. Since the **12/11/2021** when the Applicant and 7 others were first remanded in prison, more than **180 days** have passed before their committal to High Court. It follows therefore that neither the Magistrate's court nor this court has any discretion not to grant them bail. It was a violation of **Article 23(6)(c) of the Constitution as amended** for the Magistrate before whom the accused persons first appeared after the expiration of the **180 days** remand period to decline and or refuse to release them on bail for he/she had no discretion to do so.
- [12] In the premises, since the Applicant and her co-accused have all clocked the mandatory bail remand period, the tenets of justice dictate that

they all be released on bail. In the premises, I do order that the Applicant, **Nyangoma Flavia** (A5), **Kyosaba Subra** (A2), **Kiiza Mariam** (A3), **Kyosaba Bridget** (A4), **Nakalanzi Patricia** (A6) and **Ayebare Sarah** (A7) be released on bail and bail is granted on the following conditions;

1. Each of the accused persons is to be bonded in his/her own recognizance of Ugx 1,000,000/- Not cash.
2. Each of the accused persons shall be reporting to the Chief Magistrate's court Hoima once every month starting on 23/7/2022 or the next working day if it falls on a non-working day.
3. In default, the defaulting accused to forfeit the bond sum to the state, be subject to re-arrest and confinement in prison till the trial of the case is heard and finished.

Dated at Masindi this 23rd day of June, 2022.

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Byaruhanga Jesse Rugyema

JUDGE.

Court: The A/Registrar of this court to forward back the lower court to Hoima Chief Magistrate's court for purposes of the record of the accused persons' compliance with the said bail terms and committal.

Byaruhanga Jesse Rugyema

JUDGE.