

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CRIM.APPLICATION NO.16 OF 2022

(Arising from Crim. Case No.A-17/2022; CRB 190/2022)

NYAGO LOZIO ::: APPLICANT
VERSUS
UGANDA ::: RESPONDENT

Before: Hon. Justice Byaruhanga Jesse Rugyema

RULING

- [1] The Applicant **Nyago Lozio** filed this application by Notice of Motion under **Articles 28(3) (a), 23(6) of the Constitution of Uganda, S.14 (1) TIA and Rule 2 of the Judicature (Criminal Procedure (Applications) Rules**, for bail pending hearing and determination of the charge preferred against him.
- [2] The Applicant was represented by **Mr. Hon. Mugoya Gaster** while the Respondent was represented by **Ms. Florence Akello**, Assistant Director of Public Prosecutions from the Office of the D.P.P.
- [3] The grounds in support of the application are outlined in the affidavit of the Applicant which briefly are;
 - 1. That the Applicant denies having committed the alleged offence, has not pleaded guilty and therefore, is presumed innocent.
 - 2. That the Applicant was around Mid-2022 arrested on allegations of robbery of Gold from two Congolese at Bweyale in Kiryandongo District, by Chieftaincy of Military Intelligence (CMI) operatives from his home in Kyebando. Kazo Central Zone, L.CI Nansana Municipal Council, Wakiso District and was tortured for about 40 days at Mbuya in a cruel and dehumanizing manner while under their unlawful detention.
 - 3. That he now has perennial abdominal and chest pains as a result of the said torture inflicted on his person and that as such, he needs bail to access urgent and sound medical care.

4. That if granted bail, the Applicant will not abscond and will not in any way interfere with the investigations or witnesses who he does not even know.
5. That this is his first time to be charged with any criminal offence and if granted bail, he will religiously appear throughout the course of trial to answer the said charge/indictment.
6. That the Applicant has a permanent place of abode at Kyebando-Kazo Zone L.C1 in Nasana Municipality Council, Wakiso District as his matrimonial home where he ordinarily lives with his family.
7. That the Applicant has sound and substantial sureties who are aware of their duties and are ready to stand for him and ensure that he abides by the bail terms and conditions to be set by this honourable court.
8. That it is fair, reasonable and in the interest of justice that the application be granted in so far as in the event of acquittal, the Applicant will never be compensated for the suffering, pain and anguish he has gone through under detention.

[4] Counsel for the Applicant submitted that this court has wide unfettered powers to grant bail to the Applicant who was subjected to the ruthless acts of CMI Agents, which has resulted into the Applicant's abdominal and chest pains and that he therefore deserves bail to enable him access a sound health system outside the prison.

[5] **Ms. Akello Florence** for the Respondent objected to the Application on the grounds that the Applicant is charged with a serious offence of Aggravated Robbery and that his innocence shall be determined during trial on the merits of the charge.

[6] As regards the Applicant's claims of torture, counsel for the Respondent submitted that there is no certification by a medical officer of any illness or any other proof of torture from detention.

[7] As regards the Applicant's fixed place of abode, counsel for state submitted that the details of his place of abode have not been given and since Kazo Zone is wide, there is no assurance of his location once the applicant absconds. For sureties, she submitted that there is no information regarding their employment, financial standing so that if the Applicant absconds, the sureties shall be able to meet the bond.

[8] The learned counsel for state concluded that there is insufficient evidence of the places of abode and the specific addresses of both the sureties and the Applicant. That mere hailing from Kazo Zone, Nasana

is not sufficient. She prayed that this court should deny the Applicant bail.

- [9] This application was made under **S.14 (1) of the TIA** where it is provided that;

"1. 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 recognizance consisting of a bond, with or without sureties, for such an amount as is 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."

Article 23(6) (a) of the Constitution provides:

"Where a person is arrested in respect of a criminal offence-

(a) That person is entitled to apply to court to be released on bail and the court may grant that person bail on such conditions as the court considers reasonable."

- [10] The above provisions of the law grant court discretion by their use of the word "may" to grant or refuse bail and such discretion has to be exercised judiciously; **Foundation for Human Rights Initiative Vs A.G, Constitution Appeal No. 03 of 2009.**

- [11] **S.15(1) TIA** provides for grant of bail to an applicant where exceptional circumstances exist justifying his or her release on bail and that he or she will not abscond when released on bail but in **Nalongo Namubiru Florence Vs Uganda, H.C.Misc. Application No.84 of 2014** and **Foundation for Human rights Initiative Vs A.G (Supra)**, courts found that exceptional circumstances are not mandatory, that the court retains the overall discretion so long as the Applicant will re-appear or will not abscond.

- [12] Bail is granted to an accused person to ensure that he appears to stand trial without the necessity of him being detained in custody in the meantime. The effect of bail is merely to release the accused person from physical custody though he would still be under the jurisdiction of the law and is bound to appear at the appointed time and place. In determining whether or not the accused will abscond if granted bail, under **S.15 (4) of the TIA**, court must establish the following;

a) Whether the accused has a fixed place of abode.

- b) Whether the accused has sound sureties within the jurisdiction to undertake that the accused shall comply with the conditions of bail.
- c) Whether the accused has on previous occasion when released on bail failed to comply with the conditions of his or her bail; and
- d) Whether there are other charges pending against the accused.

a)Whether the accused has a fixed place of abode within the jurisdiction of the court.

[13] Counsel for the Applicant submitted that the Applicant has a permanent place of abode at Kyebando Kazo Central Zone, Nansana Municipality, Wakiso District which is his matrimonial home where he ordinarily lives with his family.

[14] Counsel attached a recommendation letter from the Area General Secretary L.C1, Kazo Central 1 Cell. The letter however is neither accompanied with the Applicant's National I.D nor a photograph (passport) that would in future enable police trace the accused/Applicant in case he absconds once granted bail. 2ndly, as was observed by court in **Aganyira Vs Uganda H.C.Misc. Application No.71 of 2013[2013] UGH CCRD 31,**

"A judicial officer only makes fair and just decisions based on law and evidence. A judicial officer is prohibited from making judicial decisions based on fanciful theories, rumors, speculations and conjecture... Local council officials are usually among the more important/ or respected members of the community and their evidence of a fact should be treated as very credible. However, evidence of a letter from the Local Council confirming the fact that applicant has a fixed place within the court's jurisdiction would be of a higher evidential value if it had been endorsed by at least another member of the L.C that include; the vice chairman, secretary, defence, finance, information among others. This would remove the danger of court speculating that the chairperson as an individual knows every human being who resides in his area on a day to day basis. Evidence of the exact location of residence of the applicant, how long he has resided in the area, whether he is a permanent resident or he is renting premises and the names of the land lord would have added value."

[15] In this case, the Applicant's L.C recommendation letter was signed by only the L.C1 General Secretary who also never attached her National I.D for verification and confirmation of her identity. Lastly, the exact location of the residence of the applicant and details of his occupation and stay in the area were not disclosed in the letter. As a result, this court is left in doubt as to the correctness of the information contained in the L.C's letter confirming that the applicant has a fixed place of abode.

b) Whether the accused has sound and substantial sureties within the jurisdiction of the court.

[16] Counsel for the Applicant submitted that the Applicant had substantial sureties who are prepared to ensure that the Applicant returns to court for trial. He presented the following sureties.

1. **Mugema Medi**, the chairperson of Kazo Central Zone where the Applicant hails from.
2. **Nasasira Sharif Biru**, a cousin of the Applicant and a resident of Kazo Central Zone where the Applicant hails from.

[17] Again, as was observed in **Aganyira Vs Uganda (supra)**, what makes a surety sound/solid/substantial is proof of surety particulars that can be easily verified to the satisfaction of court.

"The test is whether in case of breach of the bail agreement, the state has verified information that enables police to trace and arrest the surety and bring him or her before the court."

[18] In the instant case, as I have already observed about the Applicant's letter of introduction or recommendation, the letters introducing the two sureties were endorsed only by the General Secretary of the area who did not attach her National Identification card to enable this court know her identity and there is no information about the exact location of the sureties' residences and details of their occupation and stay in the area in question. Their status of employment and or business remain undisclosed and therefore unknown. Besides, the National I.D of the 2nd surety was found to locate him in **Nkono, Iganga**.

[19] In the case of **Livingstone Mukasa & Ors Vs Uganda [1976] HCB 117**, Saied CJ (as he then was) held that;

“The fact that accused persons may be married or have permanent abodes within the jurisdiction of Uganda courts are not by themselves sufficient enough for granting bail. I take the view that where the considerations concerning the liberty of a person are involved, courts must equally bear in mind, the interests of justice and neither ought to be sacrificed at the expense of the other.”

[20] At the same time, when considering bail, Justice Kisaakye (JSC) in **Foundation for Human Rights Initiative Vs A.G (supra)** cautioned court thus:

“With regard to bail matters, it...follows that whereas court is supposed to bear in mind the rights of an accused person when considering his or her bail application, court should not lose sight of the needs and interests of society to prevent and punish crimes committed within its midst. This Article (Art. 26 of the Constitution) imposes on courts the duty to ensure that they do not only consider the rights of an accused person applying for bail. Rather the court should also consider the interests of society at large. This in turn calls for the need to balance the competing interests of the accused person on the one hand and society on the other hand.”

[21] In the instant case, as per the charge sheet, the Applicant and 2 others were arrested and charged with the offence of **Aggravated Robbery C/ss 285 & 286 (1) ((b) of the PCA**. It is alleged that the Applicant and the other robbed 30 Kgs of Gold valued **USD.1,700,000 US Dollars** by use of among other things a gun. It is apparent that the gun that was used in the robbery is still at large. It has not been recovered. The offence was allegedly committed along Gulu-Kampala Road. Robberies are now rampant along this Gulu-Kampala Road as is now known by all and sundry. We must be weary of this trend of development on this road regarding robberies if society is to appreciate our administration of justice.

[22] Besides in this case, though counsel for the Applicant claim that the Applicant was subjected to ruthless torture by CMI agents during his 40 days detention, there is no medical evidence to support the claims. There is no certification from the prison's health facility supporting either the claim or that the available health facilities in prison cannot handle. Court's own observation of the applicant's body in court

revealed merely old scars signifying that if at all it is true that the scars were a result of the torture, they are long healed and they therefore, no longer pose any health risk to the Applicant requiring sound health system outside the prison. For an Applicant to qualify deserving health systems outside the prison, it must be shown by the medical authorities or recommendations by a medical officer that the condition of the applicant is incapable of being properly handled by the prison's medical department.

[23] In the absence of any medical report presented by the Applicant to support his claims of torture during arrest and the alleged 40 days detention on allegations of commission of the offence of Aggravated Robbery with a gun along robbery infested Gulu-Kampala Road, coupled with lack of sufficient evidence that the sureties are sound and or substantial and evidence of their real worthiness, balancing of the competing interests of the accused person on the one hand and society on the other hand, tilt the scale towards denial of the applicant bail.

[24] Through there is no evidence that the applicant has on previous occasion when released on bail failed to fulfil the conditions of his bail or has any other charges pending in another court, bail is denied for reasons clearly detailed above. In the premises, this application stand dismissed accordingly.

Dated and delivered at Masindi this 20th day of July, 2022.


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Byaruhanga Jesse Ruyema
JUDGE.