

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
CRIMINAL APPLICATION NO. 001 OF 2022

(Arising from Masindi Criminal Case No.43 of 2021)

1. BALIKAGIRA PATRICK

2. BAGONZA GODFREY:..... APPLICANT

VERSUS

UGANDA :..... RESPONDENT

RULING

Before: Hon. Justice Byaruhanga Jesse Rugyema

- [1] The Applicants **Balikagira Patrick** (1st Applicant) and **Bagonza Godfrey** (2nd Applicant) filed this application by Notice of Motion under **Articles 23(6) (a) & 28(3) of the 1995 Constitution of the Republic of Uganda** and **Ss.14 and 15 TIA**. It is an application for bail pending trial.
- [2] The Applicant was represented by Counsel **Munaabi Phillip** of **M/s Diadem Advocates Kampala** while the Respondent was represented by State Attorney **Nakaggwa Catherine** of the Office of the Director of Public Prosecution.
- [3] The grounds in support of the application are outlined in the 2 affidavits of the applicants which in summary are as follows;
1. That the Applicants aged 60 years and 43 years respectively were indicted with murder **C/ss 188 & 189 PCA** which is triable and bail able by this court.
 2. That the Applicants have a constitutional right to apply for and be released on bail at the discretion of this court.

3. That owing to the busy schedule of this court, the case may take long without being fixed for hearing, that if granted bail, they shall abide by the conditions court shall impose upon each of them and shall not abscond as they do not have any bad record of jumping bail or police bond.
4. That both have a fixed place of abode at Kyambogo Cell, Western ward, Kyatiri Town Council, Masindi District where they used to stay prior to incarceration.
5. That each of the accused persons is happily married with a wife and children whom they have been providing for and are now facing financial difficulties due to their incarceration.
6. That each of the accused persons has sound and substantial sureties who are willing to stand for them and guarantee their presence in court whenever they are summoned to appear.
7. That the 1st Applicant **Balikagira Patrick** is terminally ill with HIV/AIDS and cannot access proper medication while in detention.

[4] Counsel for the Applicants submitted that each of the Applicants have substantial sureties to wit;

a) For the 1st Applicant

1. **Oting Charles**, aged 59 years, a peasant of Nyakasagazi 1 Village, Kyatiri Town Council, Masindi District. He is a friend to the Applicant.
2. **Rugongeza Robert**, aged 50 years, businessman dealing in produce, a resident of Kyakayenga 1 village, Kyatiri Town Council Masindi District. He is a brother in law of the Applicant.

b) For the 2nd Applicant

1. **Ogen Fred** aged 36 years, a peasant of Kyatiri village, Kyatiri Town Council Masindi District. He is a friend to the Applicant.

2. **Kiribawa Wilson**, aged 35 years of Rwemigali village, Mirya sub county, Masindi District. He is a brother to the Applicant.

[5] In opposition to the application, State Attorney **Ms. Nakaggwa** submitted that the Applicants are charged with a serious offence of murder which carries a maximum sentence of death. The deceased was killed in a gruesome manner by use of a gun which is yet to be recovered. That as a result, the Applicants have a likelihood of jumping bail.

[6] 2ndly, that the Applicants have not presented proof of their places of abode.

[7] As regards the 1st Applicant's health condition, there is nothing to show that his problem/condition cannot be managed in prison.

[8] This Application is made under **S.14 (1) TIA** which 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 recognizance consisting of a bond, with or without sureties, for such an amount as is to appear before the court on such a date and at such time as is named in the bond.”

Article 23(6) (c) of the Constitution provides that;

“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.”

[9] The above provisions of the law use the expression “may” which means that the court is given or left with the discretion to grant or refuse bail; **FHRI Vs A.G Constitutional Appeal No.3/2009** as per Kisaakye JSC.

[10] In determining whether or not the accused will abscond if granted bail, under **S.14 (4) TIA**, the court must establish the following;

- a) Whether the accused has a fixed place of abode within the jurisdiction of the court.
- 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 a previous occasion when released on bail failed to comply with the conditions of his or her bail.
- d) Whether there are other charges pending against the accused.

[11] As regards whether the accused persons have a fixed place of abode within the jurisdiction of the court, both applicants were recommended by their area L.C1 Chairpersons that they have fixed places of abode in Kyambogo Cell, Western Ward, Kyatiri Town Council, Masindi District where they have their personal residences and business structures. However, with their sureties, no proof was provided that they have fixed or permanent places of abode in those places they purport to have them. The mere slogan of L.Cs that “the bearer of this letter whose particulars appear above is currently a resident of this locality” is not enough. There must be evidence to support such a claim. As I observed in **Olwit Robert Aliro Vs Uganda H.C Crim.Misc.Applicn.No.025/2019, Mbale**

“This court is not able to ascertain from such letter, for example how long he (the Applicant) has been a resident of Ttula village and whether he is a permanent resident or is merely renting.”

[13] In the premises, I find the sureties provided by the Applicants are not sound and therefore not substantial when it comes to standing surety for persons charged with a serious case like that of murder.

[14] As was observed by Kisaakye JSC in **FHRI Vs A.G (Supra)**

*“With respect to bail matters,...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 (Article 126 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 interest of accused person on one hand and society on the other hand. To ensure this balance, courts must at all times when dealing with a bail application bear in mind this fundamental aspect under **Article 126** of the Constitution with regard to exercise of this judicial power. ”*

[15] Where the considerations concerning the liberty of a person are involved, court must equally bear in mind the interests of justice and neither ought to be sacrificed at the expense of the other, **See Livingstone Mukasa & Ors Vs Uganda [1976] HCB 117** as per the observations of Said CJ (as he then was). That is especially so in the instant case, as rightly put by **Ms. Naggawa Catherine** where the gun that was used to commit the murder is yet to be recovered.

[16] In the premises, I am inclined to grant the application and it is dismissed accordingly.

Signed, dated and delivered at Masindi this **24th day of June, 2022.**

Byaruhanga Jesse Rugyema
JUDGE.

24/6/22

2 Applicants present

Ms. Catherine Nakaggwa for Respondent

Mr. Munaabi for the Applicants

Mr. Thembo Clerk

Court: Ruling delivered in the presence of the above in open court.

Signed

Byaruhanga Jesse Ruyema
JUDGE.