

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT MUKONO
CRIMINAL MISCELLANEOUS APPLICATION NO. 066 OF 2022
(ARISING CRIMINAL CASE 0322 OF 2021)

OPENJO MOSES.....APPLICANT

VERSUS

UGANDA.....RESPONDENT

RULING

This is an Application brought by way of Notice of Motion under the provisions of Articles 23(6)(a) and 44(c) of the Constitution of the Republic of Uganda 1995 as amended, Section 14(1) and 15(1) of the Trial on Indictments Act (TIA) Cap 23 and Rules 2 and 4 the Judicature (Criminal Procedure) (Application) Rules SI 13-8 seeking that Openjo Moses , the Applicant, be released on bail.

The grounds of the bail application as stated in the Notice of Motion dated 22nd September 2022 and filed in court on 26th September 2022 and the supporting affidavit of the Applicant deposed on the 23rd September 2022 are summarized as follows:

The Applicant was arrested and charged with murder c/s 188 and 189 of the Penal Code Act Cap 120, the offence with which the Applicant is indicted is bailable, the Applicant is presumed innocent and ought to be granted bail

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to enable him adequately prepare for his trial; he has spent more than 3 months in incarceration since his arrest and he has never been convicted of any offence.

Additionally, that the Applicant has a fixed place of abode, has substantial sureties that shall ensure his compliance with the all the terms of his bail, he is a sole bread winner of his big family which comprise of school going children and that it is in the interest of natural justice and equity that this application is granted.

It was the Applicant's Affidavit evidence he is a holder of a National Identity Card No. CM047102KRPK and he has a fixed place of abode at Kyengera Village, Namukuma Parish, Busaana Sub County, Kayunga District; he has a wife and children some of who are school going and have now stopped studying since he is the sole bread winner.

Further, that he intends to appear in court at all required times to attend his trial and clear the charges that have been levelled against him. That he has a clean criminal record and has never been accused nor convicted of any criminal and or such an offence. That he does not intend to plead guilty and shall abide by all the terms and conditions set by the Court and he shall not abscond or interfere with the Prosecution witnesses.

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Furthermore, that he has a family comprising a wife and children some of whom are school going; these are no longer studying since the sole bread winner who is responsible for their maintenance is on remand.

That he intends to appear in Court at all required times to attend his trial to clear his name of the charges that have been levelled against him; he has substantive and sound sureties who are capable of guaranteeing his compliance with the conditions of the bail.

That the circumstances surrounding the commission of the alleged offence and his release on bail shall not in any way whatsoever adversely affect the safety, wellbeing and interests of the complainant and the prosecution witnesses or investigations; that there is a great possibility of delay in conducting the trial by the Court and that there is no probability of convicting him over the charges; he is entitled to be freed from incarceration to prepare for his defence and/appearance in Court and to look after and provide for his family seeing that he is the sole bread winner.

The Applicant presented two sureties namely;

1. Oloka Lawrence is a tailor; a best friend to the Applicant and resident of Kyengera Village, Namukuma Parish, Busaana SubCounty, Kayunga District and holder of National Identity Card No.CM64039109Z9VJ.

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2. Owori Godfrey, a resident of Kyengera Village, Namukuma Parish, Busaana Sub County Kayunga District and holder of National Identity Card No. CM7104710616ZH.

Counsel introduced them before Court and presented their original National Identity Cards and letters from the LC of their area.

Learned Counsel Muhumuza Milton who represented the Applicant based his submissions on the above grounds and the supporting affidavit. I will not repeat the arguments of counsel which were grounded in the application.

Counsel relied on the case of **Panjur versus Republic** cited in the case of **Kanyamunyu Matthew versus Uganda Criminal Application 0117 of 2017** to buttress his submission that since the Applicant had not yet taken plea and did not intend to plead guilty, a greater consideration should be given to him. He further submitted that under Article 28(3) of the Constitution of the Republic of Uganda an accused person is presumed innocent until proven guilty.

Counsel cited the case of **Kayongo Bashir versus Uganda Criminal Application 158 of 2019** where court granted bail and Applicant was bonded at Shs.500,000/= cash and the sureties at Shs.2000,000/= (two million) not cash. He submitted that the offence in that case was aggravated defilement

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which is also a grave offence. He stated that the Applicant had been in prison for 5 months and will only be able to raise Shs. 500,000/= from his colleagues.

The Respondent relied on an Affidavit deposed by Nannyonga Josephine on 28th October, 2022 and filed in court on the same day, she states that she is employed by the Office of the Director of Public Prosecutions (ODPP) as State Attorney; the Applicant is charged with a serious offence of murder which carries a maximum sentence of death upon conviction and which is likely to influence him to abscond.

Further, the Applicant has not yet been committed to the High Court for trial and the investigations are not complete thus a high likelihood that the applicant will interfere with the pending inquiries and witnesses; the applicant has also not proved that he has a permanent place of abode at Kyengera Village, Namukuma Parish, Busaana Subcounty, Kayunga District as he has not attached a water or electricity bill in his name.

The Respondent was represented by Ms. Victoria Ann Nanteza who elaborated further the grounds for opposing the application as contained in the affidavit in reply, and opposed the grant of bail.

She submitted that two sureties had been presented and their original documents tendered in court, should the Court exercise its discretion to grant bail to the Applicant, then stringent terms should be set out for the Applicant and his sureties to compel his attendance on Court whenever he

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is required. She relied on Section 15 of TIA and **Wajambo Jackson versus Uganda Criminal Application 56/2022** where it was held that where there is a grant of bail; the capacity of the sureties should be considered in order for them forfeit the bail if the Applicant absconds.

ANALYSIS AND DETERMINATION OF THE APPLICATION.

The right to apply for bail for persons accused of criminal offences is provided for under the provisions of *Articles 23 (6) (a) and 28 (3) of the Constitution of the Republic of Uganda 1995 (As Amended)*. However, the grant of bail is discretionary to the court (**See: Uganda v Dr. Kiiza Besigye; Constitutional Reference No. 20 of 2005**).

In light of *Sections 14 and 15 of the TIA*, a person indicted may only be released on bail if he or she proves to the satisfaction of the court that exceptional circumstances do exist to warrant his or her being released on bail. The circumstances which are regarded as exceptional include grave sickness, infancy or old age, and if the state does not oppose the applicant being released on bail.

In deciding whether or not to grant of bail, the court will consider the personal circumstances of the accused/applicant, the circumstances of the crime and other relevant information which includes; the seriousness of the offence; the need to protect the victim or victims of the offence; protection of the community from further offending; the strength of the prosecution's

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case; the severity of the possible sentence; the probability of conviction; the prior criminal history of the accused; the potential to interfere with prosecution witnesses; the possible delay in conducting the trial; the requirements for preparing a defence; and the view of the police Criminal Investigations Department and Prosecution. (see: *Abindi and Another versus Uganda, Miscellaneous Application No.0020 of 2016*)

It was submitted for the Applicant that he is a family man with enormous responsibility of a wife and children who are school going and a wholly dependant on him for all their needs and that they have not been able to continue with school because of the incarceration. Apart from the averment in the affidavit no further evidence in support was adduced.

In *Henry Bamutura versus Uganda Misc. Application 19 of 2019*, Hon Lady Justice Prof. Tibatemwa-Ekirikubinza stated that hardship, if any, facing an Applicant, are no exceptional or unusual factors for consideration in a bail application. I have no reason to depart from that reasoning.

Regarding the sureties, in *Masaba Geoffrey versus Uganda, Criminal Misc. Application No. 0038 of 2016* it was held that "*the requirement for and duties of sureties cannot be underestimated, for they are seen by court as the members of the public who will police the applicant in his area of residence and ensure his attendance at the trial. They therefore must be persons of integrity, mature and have close geographical and where possible blood proximity to the applicant.*"

The Applicant presented two sureties who appeared in Court and he prayed that the Court finds them substantial. The Court examined the sureties and makes the following conclusions;

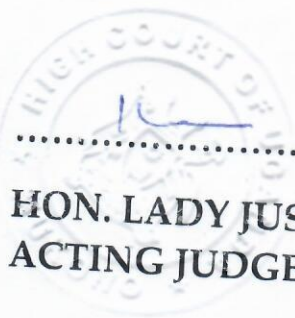
Oloka Lawrence stated that he is a tailor and earns Shs. 500,000/=(five hundred thousand shillings) per month; that he knew the offence that the Applicant had been charged with which is "alleged murder" and resides within the vicinity of the Applicant. He appeared eloquent and confident and stated that he understood the duties of a surety.

The second surety, Owori Godfrey stated that he did not know any duty of a surety. He appeared flustered when he the Court was asking him some questions. The Application does not show if the sureties are gainfully employed and in this case it was not clear what the said Owori did for a living. In the premises, I am not persuaded that he would be a substantial surety.

Upon scrutiny of the letters of introduction of the Applicant and his two sureties, I observed that whereas they bore the stamp of the LC1 Chairperson of Kyengera village, a one Wabwire Tadeo, he does not seem to be the author of the of the letters. They are written in blue ink and his name appears in black ink. The handwriting in blue and black appears to be distinctively different. Having found that the letters from the LC1 do not appear to be authentic, this Court has not been comforted that the Applicant and his sureties will fulfill the terms of bail, if granted. I therefore exercise my

discretion not to grant bail and dismiss the application. I direct that investigation in this matter be expedited enable the trial to take place. Each party shall bear their own costs.

Dated at Mukono this 29th day of November 2022.



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HON. LADY JUSTICE CHRISTINE KAAHWA
ACTING JUDGE