

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT MUKONO**  
**CRIMINAL MISCELLANEOUS APPLICATION NO. 066 OF 2022**  
**(ARISING CRIMINAL CASE 0032 OF 2021)**

**SENONO JOHN.....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 and 15(3) of the Trial on Indictments Act (TIA) and the Judicature (Criminal Procedure) (Application) Rules SI 13-8 seeking that Senono John, the Applicant, be released on bail.

The grounds of the bail application stated in the Notice of Motion dated 22<sup>nd</sup> September 2022 and filed in court on 26<sup>th</sup> September 2022 and the supporting affidavit of the Applicant deposed on the 23<sup>rd</sup> 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; he is presumed innocent and ought to be granted bail to enable him adequately prepare for his trial; he has spent more than 3 months in

incarceration since his arrest; he has never been convicted of any offence and has a fixed place of abode.

Further, that the Applicant has substantial sureties that shall ensure his compliance with 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 fair, just and equitable and in the interest of justice that this application is granted.

It was the Applicant's Affidavit evidence that he has a fixed place of abode at Kyengera Village, Namukuma Parish, Busaana Sub County, Kayunga District; he has family comprising a wife and 19 (nineteen) children some of who are school going and have now stopped going to school; he is the sole bread winner and is solely responsible for their maintenance.

Furthermore, 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; apart from the charges which form the subject matter of this Application, there no other criminal charges pending against him and that he has a clean criminal record and has never been accused nor convicted of any criminal and or such an offence; 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 the charges against him are bailable and he will not abscond bail, he shall attend Court and follow all the directives and orders of this Court; he has sound and substantial sureties who are prepared to guarantee his attendance in Court.

Additionally, that he was randomly arrested and charged with murder following an occurrence of mob justice in his area which led to the death of a suspected criminal.

The Applicant presented two sureties namely;

1. Byekwaso Stephen a farmer and resident of Kyengera Village, Namukuma Parish, Busaana Sub County, Kayunga District and holder of National Identity Card No. CM3047106R2JC.
2. Othieno Osinde, a farmer and a resident of Namukuma Village, Namukuma Parish, Busaana Sub County, Kayunga District. He holds a National Identity Card No. CM520391091HUC.

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

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

Counsel at the onset of his submissions sought to correct the name "Rodiyo" that appeared in the affidavit by deleting and replacing it with John. I considered the error a misnomer and corrected it.

It was submitted for the Applicant that since the Respondent in their affidavit in reply stated that the investigations were not complete, the act of the accused/applicant being paraded before court was premature since the State is still investigating. That the Applicant having spent five months on remand, he should be granted bail. Counsel presented the two sureties in Court and prayed that the Court finds them substantial.

The Respondent relied on an Affidavit deposed by Byakutaaga Sheba on 27<sup>th</sup> 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 a State Attorney. That the applicant is charged with a grave offence of murder which carries a maximum sentence of death upon conviction and therefore there is a likelihood of absconding; that it is true that the case applicant has not yet been committed to the High Court for trial; the investigations are not complete and there is a high likelihood that the applicant will interfere with the pending inquiries and witnesses.

Further, that save for stating that the applicant is resident of Kyengera LC1 Village, Namukuma Parish, Busaana Subcounty in Kayunga District, he has not proven that he has a fixed place of abode by either producing a land sale agreement or utility bill in his names.



Additionally, that the applicant has not proved that there exists any exceptional circumstance to justify his release on bail and that he will not abscond and render the trial nugatory; the sureties as presented by the applicant have not specified their relationship with the applicant and the capacity to compel the applicant not to abscond.

The Respondent was represented by Ms. Victoria Ann Nanteza who elucidated the grounds for opposing the application as contained in the affidavit in reply. Similarly, for brevity, I will not repeat all the arguments made by Counsel in support of her case.

She submitted that if the Court exercises 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 is required.

### **ISSUE FOR DETERMINATION**

**Whether the Applicant has met the conditions for grant of bail.**

### **ANALYSIS AND DETERMINATION**

The Court observed that the Applicant's name Senono has been differently spelled in various documents as Senono, Ssenoono and Ssenono in the Notice of Motion, National Identity Card and letter of introduction from the LC1 Chairperson respectively. I considered this a misnomer and I am of the view that the said documents refer to the same person.

The Applicant cited Article 44 (c) of the Constitution as an enabling provision for this bail application however, Counsel did not rely on it and correctly so in view, since it is not applicable in these circumstances.

The right to apply for bail for a person 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*).

Sections 14 and 15 of the TIA in a nutshell, provide that 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 include grave sickness, infancy or old age, and if the state does not oppose the applicant being released on bail. The Court has the discretion to grant bail even where none is proved.

This Court shall consider the following in deciding whether or not to grant of bail as was expounded in; *Abindi and Another versus Uganda, Miscellaneous Application 20 of 2016*); 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 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.

It was submitted for the Applicant that he is a family man with enormous responsibility of a wife and nineteen (19) children who are school going and a wholly dependent on him for all their needs. That the children are not able to continue with their school program because of the incarceration. Apart from the averments in the affidavit no further evidence to support the hardship being faced by the Applicant's family 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 admission that the investigation has not been completed, Counsel for Applicant argued that the act of the accused/applicant being paraded before court was premature. That the Applicant having spent five months on remand this Court should consider granting him bail.

I am persuaded by the Respondents submission that since the investigations are still ongoing there is a high likelihood for interference with witnesses taking into account that the offence if proved attracts a heavy penalty.

## EXAMINATION OF THE SURETIES AND DOCUMENTS

The Applicant presented two sureties who appeared in Court and he prayed that the Court finds them substantial.

Byekwaso Stephen the first surety, is a farmer, sells pineapples and has a piggery from which he earns about Shs. 700,000/= shs. 1,000,000/= per month. He stated that he did not know the offence that the Applicant had been charged with.

Upon perusal of the original letter of introduction from the LC1 Chairperson, Byekwaso Stephen is said to be standing surety for Openjo Moses. Further, the handwritten letter of the LC1 Chairperson is written in blue ink and the name of the Chairperson is written in black ink. I observe that the writing in blue ink is distinctively different from the one in black ink. Furthermore, the introduction letter is not signed by the Chairperson. It is my opinion that the introduction letter has no probative value since no oral evidence was given to clarify the unsigned letter.

I am unable for the aforementioned reasons to find that this surety is substantial.

Similarly, and in relation to the above the credentials presented by the Applicant as a resident of Kyengera LC1, the letter of introduction from the LC1 Chairperson, has similar discrepancies as those of the first surety. I



therefore find his letter of introduction from the LC1 chairperson of no probative value.

The second surety, Osinde Othieno, stated that he grows coffee and that he earns Shs. 200,000/= (two hundred thousand shillings) per month. He further stated that he did not know the offence that Applicant was charged with.

It is my finding that the said this surety is gainfully employed and resides in the same locality where the Applicant ordinarily resides which is within the jurisdiction of this Court. However, I am not persuaded that a person presented before Court as a surety would be a substantial surety when he or she does not know the charge or offence that an Applicant has been charged or indicted. It is my considered opinion that such a surety may not have the tenacity to ensure that the accused person abides the terms and conditions of bail, if granted. In the premises, I find that the second surety is not substantial.

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.

Dated at Mukono this 10<sup>th</sup> day of November 2022.

.....  
HON. LADY JUSTICE CHRISTINE KAAHWA  
ACTING JUDGE