

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MUKONO**  
**MISCELLANEOUS APPLICATION NO. 086 OF 2022**  
**(ARISING FROM CRIMINAL SESSION NUMBER 326 OF 2022**  
**AND CRIMINAL CASE NO. 39 OF 2022 AT CHIEF MAGISTRATES**  
**COURT OF LUGAZI AT LUGAZI)**  
**KYAKASON MILLION ::::::::::::::::::::::::::::::::::: APPLICANT**  
**VERSUS**  
**UGANDA ::::::::::::::::::::::::::::::::::: RESPONDENT**  
**BEFORE: HON. MR. JUSTICE DAVID MATOVU**

**RULING**

**Introduction**

1. This is an application brought by **Kyakason Million** (hereinafter referred to as “**the Applicant**”,) by way of notice of motion, under Articles 2(1), 23(6) (a), 28 (1), (3) and 139 (1) of the Constitution of the Republic of Uganda, Section 14(1) of the Trial on Indictment Act, Cap 23, and Rule 3 of the Judicature (Criminal Procedure) (Application) Rules SI13, seeking to be released on bail pending his trial.

**Background**

2. The Applicant herein is indicted with 03 (three) counts of aggravated trafficking in persons contrary to sections 3(1)(a) and 5(a) of the Prevention of Trafficking in Persons Act, 2009.
3. It is the prosecution’s case that the Applicant herein and others still at large during the month of January 2022 at Buwanuka zone in Kampala District harboured or received or confined Nasozi Bridget Mastula aged 14 years, Nakalyango Stella aged 16 years and Babirye Margaret aged 15 years by means of abduction or



fraud or deception or position of vulnerability or received payment to achieve consent of a person in control of another for purposes of sexual or harmful child labour exploitation.

4. The Applicant was subsequently committed for trial to this Court on the 30<sup>th</sup> day of August, 2022.
5. The Applicant now seeks to be released on bail pending his trial, hence the instant application.
6. This application is supported by an affidavit deposed by the Applicant. However, the contents of the same shall not be reproduced herein.
7. The Respondent also filed an affidavit in reply, opposing this application. The affidavit is deposed by Adit Lydia Atubo, a State Attorney with Office of the Director of Public Prosecutions.

### **Representation**

8. Mr. Kalende Simon appeared for the Applicant whereas Ms. Josephine Nanyonga, a state attorney with Office of the Director of Public Prosecutions appeared for the state.

### **Submissions**

9. Both parties filed written submissions, which this Court has read and considered in this ruling.
10. Counsel for the Applicant submitted that the Constitution guarantees the right to apply to be released on bail and that one is presumed innocent until proved guilty.
11. Counsel further submitted that the offence for which the Applicant is indicted with is bailable by this Honourable Court.
12. Counsel relied on the authorities of **Col. Rtd Dr. Kizza Besigye Versus Uganda** Criminal Application No. 83 of 2016, **Abindi**



**Ronald and another versus Uganda** MCA No. 20 of 2016,  
**Rupaleria versus Uganda** (1992-1993) HCB 53 among others.

13. Counsel for the Applicant further presented 05 (five) sureties namely: - Owomugisha Gorreti, Tulyakira Lauben, Ngabirano Anish, Twinomujuni Jackson and Tukahirwa Harriet.
14. However, during the hearing of this application, one surety; Owomugisha Gorreti was expunged.
15. Counsel further submitted that the Applicant has never been arrested or tried of any criminal offence, he is a father, husband and law abiding citizen and shall respect the conditions court will reasonably impose for his bail.
16. Counsel prayed that that the Applicant be released on a non cash bail on favourable terms.
17. By way of reply, Counsel for the Respondent submitted that whereas the offence is bailable, the said offence is grave in nature and it attracts a maximum sentence of death upon conviction.
18. Counsel submitted that this makes it more likely for the Applicant to abscond from Court once released on bail and thus render the trial a nugatory.
19. Counsel further submitted that whereas the Applicant claimed to have a fixed place of abode within the jurisdiction of the Court, the letter attached from NIRA and introductory letter from the village council was not rightly addressed to this Court and could have been procured for other purposes.
20. Counsel submitted that in the absence of proof of a fixed place of abode, it will be hard to trace the Applicant/ accused in case he jumps bail.
21. Counsel further submitted that whereas the Applicant presented five sureties, the said sureties reside in different and far



localities from the applicant and as such there is no guarantee that they will be in position to compel the applicant to attend court should he be released on bail.

22. Counsel prayed that this Honourable Court find that the Applicant has failed to prove any grounds to justify his release on bail.

23. Counsel further prayed that Court finds no merit in the application and deny the applicant bail and instead deem it fit to fix the case for hearing at the nearest high court session for trial.

### **Issue for determination**

24. Whether the Applicant satisfies the conditions necessary for grant of bail pending trial?

### **Decision of court**

25. The law applicable to bail was settled in the case of ***Uganda (DPP) Vs. Col (RTD) Dr. Kizza Besigye, Constitution reference No. 20 of 2005.***

26. The accused has the right to apply to court to be released on bail and the court has the discretion whether or not to grant bail under Article 23 (6) (a) of the Constitution of Uganda, 1995 which provides that the person 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.

27. The rationale behind bail is in respect to upholding one's right to personal liberty. This is especially the product of the presumption of innocence as protected under Article 28 (3) of the Constitution of the Republic of Uganda.

28. In determining an application for bail, an Applicant must not be deprived of his/her freedom unnecessarily or as merely



punishment where they have not been proved guilty by a competent court of law.

29. This principle of protection of personal liberty was further cemented in the case of **Col (Rtd) Dr. Kizza Besigye v Uganda Criminal Application No.83 of 2016** wherein Hon. Justice Masalu Musene was of the holding that "...court has to consider and balance the rights of the individual, particularly with regard personal liberty..." And further quoting the famous words of Hon. Justice Ogoola PJ (as he then was) in **Criminal Misc. Application No. 228 of 2005 and Criminal Misc. Application No. 229 of 2005** wherein the learned Justice had this to say:

*"Liberty is the very essence of freedom and democracy. In our constitutional matrix here in Uganda, liberty looms large. The liberty of one is the liberty of all. The liberty of one must never be curtailed lightly, wantonly or even worse arbitrarily. Article 23, clause 6 of the Constitution grants a person who is deprived of his or her liberty the right to apply to a competent court of law for grant of bail. The Court's from which such a person seeks refuge or solace should be extremely wary of sending such a person away empty handed- except of course for a good cause. Ours are courts of Justice. Ours is the duty and privilege to jealously and courageously guard and defend the rights of all in spite of all."*

30. This was further confirmed by Hon. Justice Stephen Mubiru in the case of **Abindi Ronald and Anor v Uganda Miscellaneous Criminal Application No. 0020 of 2016** stating that;

*"Under Article 28 (3) of the Constitution of the Republic of Uganda, every person is presumed innocent until proved guilty*



***or pleads guilty. Consequently, an accused person should not be kept on remand unnecessarily before trial.”***

31. The Court’s discretionary powers to grant bail are enshrined under Section 14 (1) of the Trial on Indictments Act and the conditions under which bail is to be granted under Section 15.
32. These circumstances are broken down to proof of exceptional circumstances like grave illness, a Certificate of no objection from the Director of Public Prosecution, infancy or advanced age; and the fact that the accused will not abscond to be proved by the accused having a fixed place of abode, sound sureties, among others.
33. However, it is trite law that proof of exceptional circumstances is not mandatory as courts have the discretion to grant bail even where none is proved.
34. Hon. Justice Stephen Mubiru in the earlier quoted case of ***Abindi Ronald and Anor v Uganda*** was of the view that “An applicant should not be incarcerated if he has a fixed place of abode, has sound sureties capable of guaranteeing that he will comply with the conditions of his or her bail.”
35. In the instant case, the Applicant is indicted with 03 (three) counts of aggravated trafficking in humans. However, the said offence is bailable by this Honourable Court.
36. Further, the Applicant has presented four sureties whom I find to be substantial sureties especially as they are close kin who have the ability to compel the Applicant to comply.
37. I do not agree with learned Counsel for the state that being relatives and allegedly from far localities and not close to the Applicant’s place of abode will hinder the Applicant’s compliance. “If the courts are simply to act on allegations, fears or suspicions,


then the sky would be the limit and one can envisage no occasion when bail would be granted whenever such allegations are made”;

**Panju v Republic [1973] E.A 282.**

**Conclusion**

38. In the final result, I find and hold that this application is allowed and bail hereby granted on the following conditions:
39. The Applicant shall deposit a cash bail of **Ug Shs 5,000,000/=** (Uganda Shillings Five Million only)
40. Each of the four sureties is also to be bound in the sums of UGX 10,000,000/- (Uganda Shillings Ten Million only) not cash.
41. The Applicant shall report to the Deputy Registrar of this Court every first Wednesday of the month, starting with the 4<sup>th</sup> day of January, 2023.

Dated this 14<sup>th</sup> day of December, 2022



**David Matovu**  
**JUDGE**