

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
HCT-00-CR-CM NO. 0231 OF 2021

[ARISING OUT OF WAKISO CASE COURT-069 OF 2020

NGOBI ANDREW=====APPLICANT/ACCUSED

VERSUS

UGANDA=====RESPONDENT/PROSECUTOR

BEFORE HON. JUSTICE TADEO ASIIMWE

RULING

This is an application for bail pending trial and is brought by way of Notice of Motion under section 74(4)(b) of the Magistrate's court Act, S. 14 (1&2) of the Trial on Indictments Act and article 23 of the constitution of Uganda 1995

The applicant is indicted with the offence of Aggravated Defilement contrary to section 129(3) & (4)(b) of the penal code Act and was committed to the high court but has not been tried hence this application.

The application is supported by the affidavit of Ngobi Simon, the applicant Dated 25/11/2021.

The grounds of this application as presented are contained in the motion and the affidavit in support of the application but briefly are as follows;

1. That the applicant stands charged with the offence of Aggravated defilement contrary to section 129(4)(a) which is a bailable offence before this honorable court.

2. The applicant and his sureties have a fixed place of abode within the jurisdiction of this honorable court and that the applicant will not abscond from trial if released on bail.
3. That the applicant shall abide by any bail conditions that may be imposed by the honorable court.
4. That it is in the interest of justice that this application is granted.

At hearing, the applicant was represented by counsel Agnes Tugume while the respondent was represented by Amy Grace a State attorney from ODPP.

The respondent did not make a reply to the notice of motion and court directed that the applicant makes written submissions and the respondents argues only points of law.

Both counsel failed to file their submissions and therefore shall consider only pleadings in determination of this matter.

RESSOLUTION.

The rationale behind the grant of 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. This was emphasized in the case of Abindi Ronald and Anor v Uganda Miscellaneous Criminal Application No. 0020 of 2016

"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."

A bail 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.

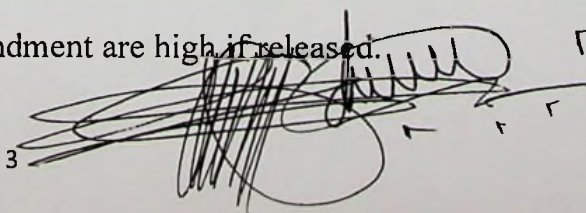
This principle of protection of personal liberty was further cemented in the case of Col (Rtd) Dr. Kizza Besigye v Uganda Criminal Application No.83 of 2016 wherein court stated that court has to consider and balance the rights of the individual, particularly with regard personal liberty...”

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. 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. However, it is trite law that proof of exceptional circumstances is not mandatory requirement as courts have the discretion to grant bail even when the exceptional circumstances have not been proved.

In this application, the state Attorney did not object to this application as no reply was made. The sureties were well introduced and identified in their introductory letters from their respective Local council areas. I find the sureties presented substantial.

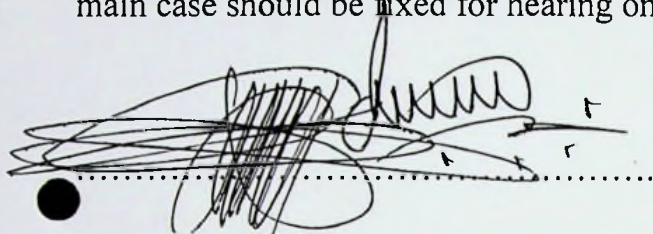
However, in consideration of applications like this one before me, it is important that court considers the circumstances surrounding the commission of crime and the particulars of the indictment before it can grant bail to an accused person. In this application the main case file is not attached. I therefore cannot ascertain a number of issues which should be considered for this court to make an informed ruling in this application.

Further, aggravated defilement is a serious offence which attracts a maximum sentence of death. The chances of abscondment are high if released.

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In conclusion therefore, I find that although the applicant has a right to apply for bail and this court has discretion to grant the same, for the earlier reasons given in this ruling, I shall exercise my discretion not to grant bail to the accused.

I therefore find no merit in this application and the same is hereby dismissed. The main case should be fixed for hearing on the nearest possible date.

A handwritten signature in black ink, appearing to be 'Tadeo Asimwe', written over a horizontal dotted line. The signature is stylized with loops and flourishes.

TADEO ASIMWE

JUDGE

28/03/2022