

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL DIVISION

MISCELLANEOUS APPLICATION NUMBER 168 OF 2023
ARISING FROM CRIMINAL CASE NUMBER NAK-COURT-410-2021

OKOTH STEPHEN:.....APPLICANT
VERSUS
UGANDA:.....RESPONDENT

RULING

BY JUSTICE GADENYA PAUL WOLIMBWA

This bail application is brought under Article 23(6)(a) and 28(3)(a) of the Constitution and section 14 of the Trial on Indictments Act.

Okoth Stephen, hereinafter called the Applicant and three others, are charged with obtaining money by false pretences contrary to section 305 of the Penal Code Act and conspiracy to commit a felony contrary to section 390 of the Penal Code Act. The prosecution alleged that the Applicant and three others and others at large on 26th October 2021 at Stanbic Bank, Forest Mall, Lugogo, with intent to defraud, obtained UGX 400M from Sanjay Tana by false pretending that they were selling him land comprised in Kyaggwe Block 120 Plot 6, land at Degeya, Mukono district. In the second count, the prosecution alleges that the Applicant and the co-accused, on the 26th day of October 2021 at Lugogo Mall in Kampala, conspired to defraud Sanjay Tana, purporting that they sold him land in Block 120 Plot 6, land at Degeya, Mukono district.

The Applicant took plea on 8th February 2023. After the plea, the applicant applied for bail, but the Chief Magistrate declined to grant bail because he feared the Applicant would abscond if granted bail. On 2 May 2023, the Applicant applied for bail, but the Chief Magistrate declined to grant bail to the Applicant because he did not have medical evidence to prove that he was sick. On 10 July 2023, the applicant again applied for bail. This time, while declining to grant bail, the Chief Magistrate ruled that:

I have heard from counsel for the A5 and counsel for A1-A4 about the application for A5; it was heard and concluded what can be done could be appeal against my ruling.

The Applicant, being aggrieved with the decision of the Chief Magistrate, then filed the present application for bail in the High Court. The grounds of the Application are:

- a) The Applicant has a Constitutional Right to apply for bail;
- b) That the Applicant is presumed innocent;
- c) That the Applicant is charged with a bailable offence;
- d) that the Applicant is innocent until proven guilty;
- e) That the Applicant has a fixed place of abode;
- f) That the Applicant has a fixed place of residence within the court's jurisdiction.

The grounds of the application are supported by the affidavit of the Applicant sworn on 8th August 2023. Save for restating the above grounds in the affidavit; the applicant also deposed that he qualifies for mandator bail, having been on remand for more than sixty days and that he has the following sureties ready to stand for him, namely:

- a) Nakyejwe Lillian, a cashier with General Mouldings Ltd;
- b) Byekwaso Richard, a cousin; and,
- c) Senoga Henry, a business friend.

The Applicant claims that all the sureties except Senoga Henry are related to him. All the sureties have indicated that they have places of abode within the jurisdiction of the court.

The Office of the DPP opposed the bail application on grounds that the sureties presented by the applicant are not substantial and are, therefore, incapable of guaranteeing the applicant's continued attendance of court if he is released on bail. The DPP also submitted that the likelihood of the Applicant absconding was very high. The DPP did not, however, assign any reasons why they doubt the Applicant. Lastly, they submitted that the Applicant had not demonstrated exceptional reasons to be released on bail. However, in the alternative, the DPP told the court that should it be inclined to release the applicant on bail, it should impose stringent conditions for his release.

M/s SSekidde Associates Advocates represent the Applicant, while the Director of Public Prosecutions (the Respondent) was represented by Ms. Jane Apolot, a State Attorney. Both parties filed written submissions to back up their arguments.

Consideration of the Bail Application

Article 23 (6) (a) of the Constitution guarantees every accused person the right to apply for bail regardless of the offence they are charged with. The Court is, however, given discretion whether to grant or deny bail.

While Article 23(6)(b), provides that:

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In the case of an offence which is triable by the High Court as well as by a subordinate court, if that person has been remanded in custody in respect of the offence for sixty days before trial, that person shall be released on bail on such conditions as the court considers reasonable.

90 Article 23(6)(b) of the Constitution only applies when an accused person has been remanded for more than sixty days before his trial starts. This article was meant to cure or lessen the burden on accused persons resulting from delays by the in prosecuting them.

95 The Applicant submitted that he was entitled to be released on bail under Article 23(6)(b) of the Constitution. However, this article does not apply to him because the trial started on 13th February 2023, when the court heard the evidence of PW 1, just within about a week of the Applicant being charged. Therefore, the Applicant cannot, take benefit of mandatory bail. The Applicant can only be released on bail if he convinces the court that he will not abscond when granted bail and that it is in the public interest that he be granted bail.

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I agree with the Applicant that he has a right to apply for bail because he is presumed innocent, and the Constitution allows him to apply for bail. I also agree with him that he is charged with a bailable offence. Furthermore, I agree that he is entitled to personal liberty, protected under Article 23 of the Constitution. Additionally, it is also true that the Applicant bears no burden in proving exceptional circumstances in section 15(3) of the Trial on Indictment Act, although proof of any of the exceptional circumstances would be an advantage that would work in favour of the accused person.

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110 However, the right to bail is not absolute. Bail will only be granted if the Applicant demonstrates to the court that he will not abscond if released on bail. According to sections 14 (1) and 15(4) of the Trial On Indictment Act and section 77(2) of the Magistrates Courts Act, before the accused person is granted bail, he must show that he has a fixed place of abode and has sound sureties to guarantee his attendance at the court. The accused must also demonstrate that it is in the public interest for him to be released on bail. In addition, the sureties presented by the accused person must be substantial and capable of supervising the accused person and paying the bond sum should the accused person abscond. The sureties must also be of a reasonable and social standing in society. They must be honest, reliable and persons of integrity. Lastly, the sureties must have a nexus with the surety because a stranger, with no capacity to supervise an accused person, cannot make a good surety.

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I have reviewed the affidavit of the applicant. He is a resident of Kigo Lunya Cell, Mutungo Ward, Ndejje, Makindye Ssabagabo. The LCI Chairperson of the village says that he has been a resident for the last two years. The Applicant has attached a tenancy agreement between himself and Jacent

Alinaitwe, dated May 7th, 2022, to prove that, indeed, he has a fixed place of abode in the village.
The agreement shows that the accused paid UGX 1,500,000 at the beginning of the tenancy.

In spite of the guarantees and information provided by the Applicant, there are material gaps and contradictions in the information. Firstly, the tenancy agreement is silent on the monthly rent and the duration of the tenancy. Secondly, the signature of the Applicant on the tenancy agreement and his national identity card are fundamentally different. In fact, the signature on the tenancy agreement is more similar to the signature of Nakyajwe Lillian; the applicant has presented it as one of his sureties. Thirdly, although the Applicant says he is a resident of Kigo, Lunya, the charge sheet says he is a resident of Kanaba, Nasajja division, Ssabagabo. These gaps are glaring contradictions and outright lies that cannot go unnoticed by the court.

The Applicant bears the legal burden of proving to the court that he can be trusted to return to court if he is released on bail. As I observed in the case of **Onebe Francis v. Uganda, HCMA 222 of 2021**, bail is founded on a trust system, and if any or the whole of this trust is put into question, the court cannot assume the risk of releasing the applicant on bail. An applicant who presents contradictory and false documents is a danger to himself, his sureties, and the administration of justice because he cannot, even with the best of the sureties, be trusted that he will honour his obligations to court. A dishonest Applicant should be kept in custody to guarantee his attendance of the court.

For this reason, therefore, the Applicant has failed to demonstrate that he will not abscond if released on bail. The Application for bail is hereby denied.

Decision

The Application for bail is dismissed because the Applicant cannot be trusted that he will not abscond if released on bail. It is so ordered.



Gadenya Paul Wolimbwa

JUDGE

12th September 2023

I request the Deputy Registrar to deliver this decision on 14th September 2023.



Gadenya Paul Wolimbwa

JUDGE

12th September 2023