

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO  
CRIMINAL MISC. APPLICATION NO. 85 OF 2022  
(ARISING FROM MUKONO CHIEF MAGISTRATE'S COURT OF LUGAZI  
AT NJERU CRIMINAL CASE NO. AA 010 OF 2022)**

**SEMWOGERERE SWAIBU MUSA** ..... **APPLICANT**

**VERSUS**

**UGANDA** ..... **RESPONDENT**

**BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA**

**RULING**

1. This application was for bail pending committal to this court. The application was brought by Notice of Motion under the provisions of Article 23 (6) (c) of the Constitution of the Republic of Uganda, 1995; section 16 of the Trial on Indictment Act, Cap. 23.
2. The application is supported by the affidavits of the Applicant, Mr. Wambuzi Noah Nimrod, Mrs. Mirembe Esther and Mr. Mwanja Jamada. The grounds were that:
  - (a) the Applicant was arrested on the 28<sup>th</sup> February, 2022 and charged with the offence of aggravated defilement c/s 129 of the Penal Code



Act and remanded to prison on the 23<sup>rd</sup> March, 2022 by the Grade 1 Magistrate at Njeru;

- (b) the Applicant has been on remand in Bugungu and Luzira prisons for over 360 days before his case is committed to this court;
- (c) the Applicant is a teacher at Pearl Prime Academy, in Buikwe District and the sole bread winner for his 9 children who depend entirely on his support for their sustenance and whose livelihood has greatly been affected since his incarceration;
- (d) the Applicant is a resident of Namwezi Zone, Njeru West Ward, Njeru Municipality, Buikwe District and therefore he has a fixed place of abode within the jurisdiction of this honourable court;
- (e) the Applicant has substantial sureties who are willing to stand for him and he humbly invites this honourable court to find them so;
- (f) the sureties are residents of Namwezi Zone Cell, Njeru West Ward, Njeru Municipality, Buikwe District and their duties have been explained to them by the Applicant's lawyers from the M/s Legal Aid Project of the Uganda Law Society;
- (g) the Applicant has no previous criminal conviction and the prosecution has concluded investigations into his matter, therefore there is no chance that he would interfere with the prosecution investigations; and





(h) the Applicant undertakes to abide by the terms and conditions imposed by this honourable court and ensure that he attends court whenever required.

3. During the hearing of this application on 11<sup>th</sup> April, 2023, the Applicant was represented by Counsel Kibaki Ronald from Nsubuga K.S & Co. Advocates who held brief for Serwanga Godfrey from M/s Zahura & Co. Advocates. The Respondent was represented by Counsel Nanyonga Josephine, a State Attorney from the Office of the Director of Public Prosecutions. Only the Applicant's counsel filed written submissions.
4. This court noticed that there is a sister file attached to this application containing another bail application vide Criminal Miscellaneous Application No. 36 of 2022, for release of the same accused person. However, there is no evidence that the application was served on the Respondent as all copies of the Notice of Motion are in the court file. This is an abuse of court process in filing two applications for the same person seeking the same remedy. Therefore, I hereby discontinue Criminal Miscellaneous Application No. 36 of 2022 under section 17 (2) of the Judicature Act, Cap. 13, and proceed to determine the merits of the instant application.
5. The Applicant's counsel contended that it is trite law that a person whose liberty has been deprived by imprisonment before trial or when not serving a sentence is free to apply for bail. That the Applicant is entitled as of right under Article 23 (6) (a) of the Constitution to apply



for bail pending the determination of his trial. That this is premised on the presumption of innocence and that the primary purpose of bail should be to ensure that the Applicant appears to stand trial without the necessity of being detained in custody during the period of trial. Counsel referred to the cases of **Col. (Rtd) Dr. Kiiza Besigye v. Uganda, Criminal Application No. 83 of 2016** and **Dennis Obua v. Uganda, Criminal Application No. 18 of 2005**.

6. The Applicant's counsel submitted further that this honourable court has the discretion to grant the application for bail at any stage of the proceedings and that the main concern to the court in all applications is that the accused will not abscond when released on bail. That it is important that the Applicant confirms his fixed place of abode and presents sound sureties who will ensure his attendance in court.
7. The Applicant's counsel stated that the Applicant has a fixed place of abode within the jurisdiction of this honourable court at Namwezi Zone Cell, Njeru West Ward, Njeru Municipality, Buikwe District. That this was corroborated by the letter of introduction dated 26<sup>th</sup> September, 2022, from the L.C.1 chairperson attached to the Applicant's affidavit in support of this application. The Applicant's counsel submitted that the Applicant has satisfied the onus placed on him to prove that he has a permanent place of abode. Counsel cited the case of **Mugenyi Steven v. Uganda, Miscellaneous Application No. 65 of 2005**.
8. The Applicant's counsel presented 3 sureties within the jurisdiction of this honourable court who are willing to stand for him and undertake





that he will comply with the conditions of bail. The sureties presented before court are as follows:

- (a) Mrs. Mirembe Esther, 28 years old, the Applicant's wife with 2 children of the Applicant, a resident of Namwezi Zone Cell, Njeru West Ward, Njeru Municipality, Buikwe District, with mobile telephone No. 0706 912622/0776 548461;
  - (b) Mr. Wambuzi Noah Nimrod, 57 years old, the Applicant's friend, resident of Namwezi Zone Cell, Njeru West Ward, Njeru Municipality, Buikwe District, with mobile telephone No. 0703 784685/0756 572148; and
  - (c) Mr. Mwanja Jamada Biso, 49 years old, the Applicant's paternal uncle, resident of Namwezi Zone Cell, Njeru West Ward, Njeru Municipality, Buikwe District, with mobile telephone No. 0783 065269/0704 725754.
9. The Applicant's counsel argued further that the Applicant is a sole bread winner and caretaker of his mentally ill brother. That while the offence of aggravated defilement is a serious one, it still remains the law that an accused is presumed innocent until proved guilty and that it is therefore not right to act on fears and allegations of the possibility of abscondment if one is granted bail. That in addition, the Applicant has no previous criminal conviction. Also that there is no chance that the Applicant will interfere with the prosecution investigations. That the investigations are complete and the Applicant is committed for trial. That the possibility of the Applicant's interference with investigations is



not likely and that unless the prosecution substantiates the allegation of interference with investigations, the same would be dismissed as unfounded and baseless.

10. Counsel argued that the Applicant was committed for trial but it is not certain when he will be tried, contrary to the requirement for speedy trial. That it is in the interest of justice that the Applicant is granted bail and that court be delighted to exercise its discretion in the Applicant's favour.
11. On the other hand, the Respondent's counsel objected to the bail application arguing that the Applicant is already committed to this court and that the offence with which he is charged is grave in nature and he is most likely to abscond after disclosing to him the evidence with the prosecution which may render the trial nugatory if he doesn't report back.
12. The Respondent's counsel argued that the Applicant was the head teacher of the primary school that is to say, Pearl Pride Academy in Njeru Municipality, Buikwe District and this is the same school where the victim is currently attending her primary education in Primary 7. That if the Applicant is released on bail, he may interfere with the victim by influencing her not to appear in court to testify or disorganize her studies since she is a candidate. The Respondent's counsel prayed that this application is dismissed, the Applicant is denied bail so that the matter can be fixed for trial since the Applicant is already committed.





13. In rejoinder, the Applicant's counsel averred that the aspect that the accused is already committed is evidence from the Bar and that the main case is not fixed for hearing. That the Applicant has been on remand for over a year. Counsel added that the Applicant still enjoys the presumption of innocence. That there is no compensation which can be given to an accused person who may be acquitted at the end of the trial but has been made to stay on remand for years yet the law allows him in the circumstances to apply for bail and attend court proceedings when he is at home.

14. On the issue of the offence being grave, the Applicant's counsel submitted that there is no evidence that the Applicant is capable of running away and that if that was true the Investigating Officer would have sworn an affidavit. That this is a mere allegation. Furthermore, that there is no evidence that the victim is in Primary 7, that the summary of evidence shows that in 2021, the victim was in Primary 6. That after being in prison for one year, it is not certain that the Applicant can go back to be a head teacher. Counsel prayed that this court disregards the Respondent's submission and grants the Applicant bail.

**Issue: Whether the Applicant is entitled to be granted bail.**

15. The court's discretionary power to grant bail is stipulated under section 14 (1) of the Trial on Indictment Act, Cap. 23, which provides that:



*"The High Court may at any stage in the proceedings release the accused person on bail, that is to say, on taking from him or her a recognizance consisting of a bond, with or without sureties, for such an amount as is reasonable in the circumstances of the case, to appear before the court on such a date and at such a time as is named in the bond."*

16. It is imperative that the exercise of the discretion cited above must be exercised with caution and care and must be applied by balancing the interests of both justice and personal liberty of individuals. The legal provisions on bail should not be interpreted only for the benefit of the accused person but also for the benefit of the prosecution and of the society at large. The society is affected directly or indirectly by criminality.
17. It is worth noting that punishment of an accused person should begin only after conviction. This means that the right to personal liberty cannot be taken away from a person except in accordance with the law. To gain the right to personal liberty, the accused person has to first fulfill the pre-conditions for release on bail which include proving that he has a fixed place of abode within the court's jurisdiction; presenting before court at least two substantial persons who are willing to stand sureties for the bail Applicant and who must be his or her close kin; proof of exceptional circumstances.
18. In the instant case, it was submitted for the Applicant that he has a fixed place of abode at Namwezi Zone Cell, Njeru West Ward, Njeru





Municipality, Buikwe District, where he resides with his wife (who is the first surety in this application) and children. The L.C.1 letter from the area chairperson named Mayanja Joseph dated 26<sup>th</sup> September, 2022 introducing the Applicant as a resident of that area and a law abiding and responsible person accompanied the Applicant's affidavit. A copy of the Applicant's national identity card was also attached to this application and original presented to this court during the hearing of this application. I find that the Applicant has satisfied the requirement of proving that he has a fixed place of abode within the jurisdiction of this court.

19. As to the sureties presented before this honourable court, the description of the 2<sup>nd</sup> surety clearly creates no kinship or strong bond between him and the Applicant and it is not clear to this court for how long the two have known each other or have been friends. The 2<sup>nd</sup> surety (Wambuzi Noah Nimrod) was born on 2/2/1965 while the Applicant was born on 3/9/1986. The age difference between the two is about 21 years. This leaves this court with doubt about their friendship. In my view, the Applicant would not hesitate to breach the terms and conditions of bail to jeopardize the 2<sup>nd</sup> surety leave alone the 1<sup>st</sup> and 2<sup>nd</sup> surety who are his wife and paternal uncle, respectively. Furthermore, considering the age difference between the 1<sup>st</sup> surety who is younger than the Applicant by about 8 years, this court is not convinced that the 1<sup>st</sup> surety though the Applicant's wife will be able to compel the Applicant or prevail over him to appear in court whenever required to do so. Therefore, I find her not substantial. The only



substantial surety is Mwanja Jamada Biso, the uncle to the Applicant, who alone cannot be saddled with the responsibilities of a surety.

20. The Applicant's counsel submitted that the proof of exceptional circumstances is no longer mandatory by the Applicant. However, it should be noted that paragraph 14 (1) (a) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, Legal Notice No. 8 of 2022, still maintains proof of exceptional circumstances as one of the legal requirements where the bail applicant or accused is charged with a capital offence or an offence triable only by the High Court. It provides thus:

*"(1) The High Court may, in exceptional circumstances, grant bail to a person accused of committing any of the following offences—*

*(a) an offence triable only by the High Court;"*

21. In the instant application, it is not in dispute that the Applicant has been charged with a capital offence and has not provided any proof of exceptional circumstances. The word 'may', in the above cited provision of the Bail Guidelines still leaves this court with the discretion to grant or deny bail whether there are exceptional circumstances or not.

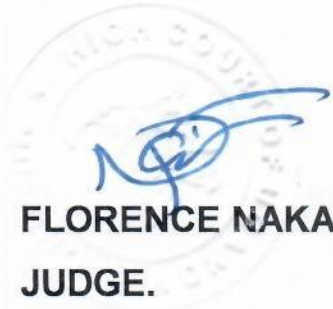
22. Based on the fact that only one of the three sureties presented is found to be substantial, this court cannot grant bail to the Applicant. Therefore, this application is hereby dismissed. Each party shall bear their own cost of this application.





I so rule.

This ruling is delivered this 17<sup>th</sup> day of May, 2023 by



**FLORENCE NAKACHWA**  
**JUDGE.**

*In the presence of:*

- (1) Mr. Semwogerere Swaibu Musa, the Applicant;*
- (2) Ms. Pauline Nakavuma, the Court Clerk.*