

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MUBENDE  
CRIMINAL MISCELLANEOUS APPLICATION NO.0026 OF 2023  
[Arising from MBD A62/2022.CRB 423/2022]

NABYESERO ROSEMARY alias KIZZA ROSE

APPLICANT

VERSUS

UGANDA

RESPONDENT

BEFORE HON JUSTICE MOSES KAZIBWE KAWUMI

RULING

The Applicant stands charged with Aggravated Robbery contrary to Sections 286 & 286 of the Penal Code Act and Murder contrary to sections 188 & 189 of the same Act. She applied for bail under Article 23(6)(a)(C), 28(1) and 44(C) of the Constitution, Section 14 of the Trial on Indictments Act and other the enabling legislation.

The grounds of the Application which are further reiterated in the Affidavit filed in support by the Applicant are;-

1. That she has substantial sureties ready to stand for her to ensure that she does not abscond from trial and her right to a fair and speedy trial enshrined in the Constitution has been infringed by the state.
2. That she has a fixed place of abode at Kitanda village, Makukulu Parish, Kiruma sub-county in Mubende District within the



jurisdiction of the court and has not been committed to the High Court for trial within the six months period stipulated in the law.

3. That it is in the interest of justice that she is released on bail pending trial.

In the Affidavit supporting the Application, the applicant states that she is 37 years old and was charged with the offences on 4<sup>th</sup> May 2022 but has not been committed for trial for now 12 months.

### **Representation.**

The Applicant was represented by Ms. Asia Mbetabye. The Respondent was represented by Mr. Kakooza Fred (Assistant DPP).

Counsel for the Applicant reiterated the Applicant's constitutional right to apply for bail emphasizing the twelve months period she has spent on remand without being committed to the High Court for trial. It was further emphasized that the applicant has a fixed place of abode within the jurisdiction of the court and has sureties to ensure that she does not abscond from trial.

Counsel for the Respondent did not oppose the application and left it to the discretion of the court for an appropriate decision.

### **Decision.**

I have considered the averments in both the Application and the affidavit in support sworn by the Applicant. I have also carefully considered the submissions made by Counsel for the Applicant.

It is trite law that any accused person is entitled to apply for bail under Article 23(6)(a) of the Constitution. The Court has the discretion to either grant or deny that person bail. This is premised on the principle that the accused person is presumed innocent until he/she either pleads guilty or



is found guilty after the due process under Article 28(3) (a) of the Constitution.

The Applicant is charged with offences triable only by the High court. **Article 23(6)( c) of the Constitution** provides;-

*“Where the accused has been in custody for 180 days on an offence triable by the High Court only and has not been committed to the High Court for trial, that person shall be released on bail on reasonable conditions.”*

The wording of Article 23(6)(C) of the Constitution denies court of any discretion as to whether to grant bail or not and restricts it to the determination of what may be reasonable conditions given the peculiar circumstances of the case.

The mandatory release on bail pending trial for an applicant who has not been committed to the High Court for trial within the stipulated six months period is further emphasized in Guidelines 9 and 10(1) of the **Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions ,2022.Legal Notice No.8 of 2022.**

The Applicant is confirmed to have a permanent place of abode at Kitanda Village, Makukulu Parish, Kiruma Sub County in Mubende District and produced a letter of introduction as a resident authored by a one Ssegawa Joseph the Village Chairman.

The Applicant produced two sureties:-

- i) Nakasumba Teddy, 42 years old and a resident of Kitanda Village and a sister of the Applicant. She holds National Identity Card Number CF 80031105Q34F. The Surety furnished court with a Letter of Introduction by the Village Chairman.
- ii) Muhangi David, 41 years old and a resident of Kitanda Village , a cousin brother of the Applicant The Surety holds National Identity



Card Number CM 81999108G75E. He produced a letter of introduction authored by Chairman Ssegawa Joseph and can be contacted on Telephone numbers 0759 849590.

The sureties presented are adult relatives of the Applicant who reside in the same locality with her and fully understood their obligations. They have no known antecedents and produced documents introducing them. I find no reason not to deem them suitable for purposes of this application.

I grant bail to the Applicant on the following terms;-

- a) The Applicant shall deposit in court a sum of Uganda Shillings 3,000,000/- in cash.
- b) Each of the two sureties is bound in the sum of Uganda Shillings 30,000,000/- not cash.
- c) The Applicant shall report to the Assistant Registrar at Mubende court every 5<sup>th</sup> day of the month or on the next working day if the date falls on a weekend or a Public holiday.



Moses Kazibwe Kawumi  
Judge

5<sup>th</sup> April 2023