

The Republic of Uganda
In The High Court of Uganda in Soroti
Miscellaneous Application No. 0005 of 2023
(Arising out from Criminal Case No. SOR-20-CR-AA-024 of 2022)

10 Abas Kizito Applicant

Versus

Uganda Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

15 Bail Application:
Ruling

1. Introduction:

This is an application brought by way of notice of motion under Articles 20(2) 23(6)(a) & 28 (1) & 3(a) of the Constitution of Uganda 1995, Sections 14(1) of the Trial on Indictment Act Cap. 23 and section 17(2) of the Judicature Act for orders that the applicants remanded for the offence of aggravated defilement contrary to section 129 (3) (4) (c) be released pending trial and consequential directions be issued to regulate the bail.

The grounds of the application as set out in the application and supporting affidavit sworn by the applicant briefly are that the applicant has a constitutional right to apply for bail and is presumed innocent till proven otherwise. That the applicant has been in detention since the 24th day of June 2022 and was committed to the High Court for trial on the 27th day of July 2022 but the hearing date has not been fixed.

30 That the applicant has substantial sureties who have undertaken to abide
by all the terms and conditions that may be set by this honourable court.

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5 The applicant also has a fixed place of abode within the jurisdiction of this honourable court.

The respondents were dully served with the application as proven by the affidavit of service dated 9th March 2023 on record, however no reply was made.

10 The submissions by counsel for the applicant M/s Engwau & Co. Advocates have been read and duly considered.

2. Determination:

a. The law:

The law applicable to bail is settled in the case of *Uganda (DPP) Vs. Col (RTD) Dr. Kiiza Besigye, Constitution reference No. 20 of 2005*. The accused has
15 the right to apply to court to be released on bail and the court has the discretion whether to grant bail under Article 23 (6) (a) of the Constitution of Uganda, 1995 which provides that;

Where a person is arrested in respect of a criminal offence—

20 **(a) 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;**

Capital offences such as aggravated defilement in this instance are bailable, however, whether the court is inclined to exercise the discretion to grant
25 or not is a matter depending on the circumstances of each case.

Section 14(1) of the Trial on Indictment Act amplifies Article 23(6)(a) of the Constitution thus;

**(1)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 recognisance
30 consisting of a bond, with or without sureties, for such an amount as is**

5 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.

The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 under paragraph 5 provide for the general principles applicable in the consideration of a bail application thus;

10 The court shall, in considering a bail application, be guided by the following principles as enshrined in the Constitution—

(a) the right of an applicant to be presumed innocent as provided for in article 28(3)(a) of the Constitution;

(b) the applicant's right to liberty as provided for in article 23 of the
15 Constitution;

(c) the applicant's obligation to attend trial;

(d) the discretion of court to grant bail on such terms and conditions as the court considers reasonable; and

(e) the need to balance the rights of the applicant and the interests of justice.

20 Having explored the law on bail, I will now turn to the merits of this application.

Counsel submitted on the right to apply for bail under article 26(3)(a) of the Constitution, the discretionary power of court to grant bail as provided under section 14(1) of the Trial on Indictment Act and the principle of
25 presumption of innocence as provided under article 28 (3)(a) of the Constitution.

I will examine into these as they are clear principles in regard to the grant of bail as follows;

Section 15(1) of the Trial on Indictment Act provides thus;

5 Notwithstanding section 14, the court may refuse to grant bail to a person
accused of an offence specified in subsection (2) if he or she does not prove
to the satisfaction of the court—

(a) that exceptional circumstances exist justifying his or her release on bail;
and

10 (b) that he or she will not abscond when released on bail.”

In this section, “exceptional circumstances” means any of the following— (a)
grave illness certified by a medical officer of the prison or other institution
or place where the accused is detained as being incapable of adequate
medical treatment while the accused is in custody; (b) a certificate of no
15 objection signed by the Director of Public Prosecutions; or (c) the infancy or
advanced age of the accused.

Section 15(4) provides

In considering whether or not the accused is likely to abscond, the court may
take into account the following factors—

20 (a) whether the accused has a fixed abode within the jurisdiction of the court
or is ordinarily resident outside Uganda;

(b) whether the accused has sound sureties within the jurisdiction to
undertake that the accused shall comply with the conditions of his or her
bail;

25 (c) whether the accused has on a previous occasion when released on bail
failed to comply with the conditions of his or her bail; and

(d) whether there are other charges pending against the accused.

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a. Fixed place of abode

- 5 The applicant under paragraph 11 stated that he has a fixed place of abode located at Bazaar Cell, Bazaar Ward, Kumi Municipality in Kumi District within the jurisdiction of this honourable court. A copy of his national identity card and an introduction letter were attached to the application as annexures 'C1' and 'C2'.
- 10 His national ID indicates his residence as Nangwe South, Nangwe, Dabani, Samia Bugwe in Busia, however the letter of introduction from the LC1 Chairperson of Bazaar Cell, Bazaar Ward, North Division, Kumi Municipality in Kumi District states that he is a resident of this area having relocated there from Busia.
- 15 Counsel submitted that this residence is the same indicated in the accused's indictment and he does not intend to change it. He further submitted that the LC1 letter and the recommendation of the sureties are sufficient proof of the applicant's fixed place of abode as clearly stated in the documents attached to the application.
- 20 He further submitted that when released on bail the applicant will attend court whenever required; the sureties will ensure that the applicant attends court when called upon. The essence of a fixed place of abode is traceability of an accused in the event of abscondment or whenever necessary.
- 25 Section 15(4) (a) of the Trial on Indictment Act provides that in considering whether an accused is likely to abscond court may take into consideration whether the applicant has a fixed place of abode within the jurisdiction of the court. This is amplified by paragraph 13(k) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions. While the Law does not define
- 30 the phrase 'fixed place of abode' what is important is that the fixed place

5 of abode must be within the jurisdiction of the court considering the bail application.

Where an applicant fails to prove this under section 15(1) of the TIA the court may deny him bail. I find that the applicant has proved a fixed place of abode.

10 **b. Substantial sureties:**

The applicant under paragraph 9 of his affidavit stated that he has three sureties who he believes to be substantial and they fully understand the duties and responsibilities of surety and are willing undertake the conditions set by this Honourable Court. He attached copies of their
15 identity cards and introduction letters collectively marked as 'B1' to 'B6'. These sureties include;

Mrs. Salima Hamid, a sister-in-law to the applicant, a business woman and a resident of Bazaar Cell, Bazaar Ward, Kumi Municipality in Kumi District. The introduction letter from the LC1 of this area indicated that she is a
20 resident of this area. The copy of her national ID bears similar details in terms of residence.

Mrs. Awek Fatuma Kadogo, wife to the applicant, a business woman and resident of Bazaar Cell, Bazaar Ward, Kumi Municipality in Kumi District. The introduction letter from the LC1 of this area indicated that she is a
25 resident of this area, however the details on her national ID bear Busia as her place of residence.

Mrs. Namyalo Lukia an aunt to the applicant, business woman and resident of Orwada cell, Orwada Ward, Western division Soroti City. The introduction letter from the LC1 of this area indicated that she is a resident
30 of this area, however the details on her national ID bear Nakawa Division as her place of residence.

5 Counsel submitted that he explained to the sureties their obligations and consequences of failure to ensure that the accused person attends court and they have all understood their obligations, he prayed that this court finds them substantial.

Section 15(4)(b) of the Trial on Indictment Act and paragraph 13 (l) of the
10 Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, provide that in considering whether an accused is likely to abscond the court shall consider whether the accused has sound sureties within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail.

15 Paragraph 15 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions provides for determinants on the suitability of a surety thus;

(1) When considering the suitability of a surety, the court shall take into account the following factors—

- 20 (a) the age of the surety;
(b) work and residence address of the surety;
(c) character and antecedents of the surety;
(d) relationship to the accused person; and
(e) any other factor as the court may deem fit.

25 (2) Subject to sub-paragraph (1) the proposed surety shall provide documentary proof including—

- (a) a copy of his or her national identity card, passport or aliens identification card;
(b) an introduction letter from the Local Council 1 Chairperson of the area
30 where the surety is ordinarily resident; or

- 5 (c) asylum seeker or refugee registration documents issued by the Office of the Prime Minister.

In spite of the minor glitches on the national IDs, I find that the sureties are substantial and the disparity in the residence on the national IDs of Namyalo and Awek is not fatal to the consideration of grant of bail as it is true that one may have registered from a particular place in Uganda but
10 could have moved to another but is still within the jurisdiction of this Honourable Court and so given that the LC1s of their current areas of residence have confirmed their presence in Orwada cell and Bazaar cell, respectively, I find that their fixed place of abode has been proved.

- 15 The sureties are also close relatives to the applicant and as such are capable of compelling him to attend court and in the event that they fail to do so, counsel for the applicant submitted that he has informed them of the consequences.

3. Conclusion:

- 20 On the basis of the evidence put forward, I am satisfied that this is a case where I should exercise my discretion and grant bail to the applicant pending his trial.

Accordingly, bail is granted on the following conditions;

- 1) The applicant to deposit a Cash bond of Shs. 2,000,000/-
- 25 2) The applicant and each of his sureties to provide a recent photograph , telephone numbers and copies of national IDs to the Registrar of this court and the Chief Resident State Attorney, Soroti for file purposes.
- 3) Each of the Sureties is bound in the sum of Shs. 2,000,000/- not cash.
- 3) The Applicant to report to the Registrar of the Court once a month on
30 the first Monday of each month with effect from 04/09/2023 until otherwise directed by court.

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5 I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

23rd August, 2023

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