



5 Further, the applicant states that according to the Constitution he is presumed innocent until proven guilty or until he pleads guilty to the charge of aggravated robbery which offence is bailable by this court.

The applicant has presented two sureties who are stated to understand their obligation towards this honourable court and who ready to be  
10 presented before this court.

That the applicant before his arrest and detention was a permanent resident at Osirima Village, Apapai parish, Apapai sub county in Kalaki District and will continue residing in the same address.

The applicant additionally states that the respondent was duly served  
15 with the application as proven by the affidavit of service dated 17<sup>th</sup> April 2023 on record but did not make any reply to it, meaning that it does not oppose the application.

2. Representation:

In this application, the applicant is represented by M/s Legal Aid Project  
20 of the Uganda Law Society. The respondent was unrepresented.

Counsel for the applicant argued this application by way of filing a written submission which, together with the averments of the applicant has been read and duly considered.

3. Determination:

25 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*. An accused person has the right to apply to court to be released on bail and the court has the discretion whether to grant bail.

30 The right to apply for bail is provided for in **Article 23 (6) (a)** of the **Constitution of Uganda, 1995** which provides that;



- 5 Where a person is arrested in respect of a criminal offence—  
(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.

Where an applicant is charged with a capital offence, such as aggravated  
10 robbery in this instance, such an offence is bailable at the discretion of  
court depending on the circumstances of the 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  
15 person on bail, that is to say, on taking from him or her a recognisance  
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.

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

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  
25 article 28(3)(a) of the Constitution;  
(b) the applicant's right to liberty as provided for in article 23 of the  
Constitution;  
(c) the applicant's obligation to attend trial;  
(d) the discretion of court to grant bail on such terms and conditions as the  
30 court considers reasonable; and



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

The above is the basic position of 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  
10 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 presumption of innocence as provided under article 28 (3)(a) of the Constitution. I will not delve into these as they are clear principles. Counsel, additionally, submitted that the offence of aggravated robbery  
15 c/s 285 and 286 of the Penal Code Act is an offence which this honourable court has jurisdiction to grant bail on such terms as it deems fit.

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

Notwithstanding section 14, the court may refuse to grant bail to a person  
20 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

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

25 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 objection signed by the Director of Public  
30 Prosecutions; or

(c) the infancy or advanced age of the accused.

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5 However, proof of exceptional circumstances is no longer a requirement for release on bail.

See: *Foundation for Human Rights Initiative Vs Attorney General Constitutional Petition 20/2006*.

Of importance to this Honourable Court is, however, the provisions of the  
10 law under **Section 15(4) of the Trial on Indictment Act**. It provides;

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

- (a) whether the accused has a fixed abode within the jurisdiction of the court or is ordinarily resident outside Uganda;
- 15 (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;
- (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
- 20 (d) whether there are other charges pending against the accused.

I will examine this application in light of the provisions of Section 15(4) of the Trial on Indictment Act.

a. Fixed place of abode:

The applicant under paragraph 10 of his affidavit state that before his  
25 arrest and detention he was a permanent resident at Osirima Village, Apapai parish, Apapai sub county in Kalaki District and that he does not intend to change his place of residence from the jurisdiction of this court. He has provided a copy of his national identity card and an introduction letter is attached to his application as annexures 'F'.

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5 The perusal of the attached national ID indicates that the applicant is a resident of Moruapesur Cell B, Moruapesur Ward, Soroti East in Soroti District.

A letter of introduction from an LC1, which is also attached to his application, shows that he is from Osirima village, Apapai Parish, Apapai  
10 S/county in Kalaki District indicates that the applicant is a true resident of the village and is the biological son of one Osuku Bosco. That letter from the LC1 chairperson proves that the applicant has a fixed place of abode within the jurisdiction of this court.

The essence of a fixed place of abode is the traceability of an accused in  
15 the event of abscondment or whenever necessary.

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 requirement is amplified by paragraph 13(k)  
20 of the **Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions.**

While the Law does not define the phrase '*fixed place of abode*' what is important is that the fixed place of abode must be within the jurisdiction of the court considering the bail application.

25 Where an applicant fails to prove this under section 15(1) of the TIA, bail may be denied.

From the letter of introduction and the averments of the applicant, I find that the applicant has proved a fixed place of abode.

b. Substantial sureties:

30 The applicant under paragraph 9 of his affidavit stated that he has two sureties who understand their obligations to this Honourable court and



5 according to counsel for the applicant, the said sureties have been explained to their obligations to court and the consequences of failure to ensure that the applicant/accused person attends court and they seem to have understood them.

These sureties are;

- 10 a. **Osuku Bosco**, the applicant's biological father and;  
b. **Aliano Ruth**, the biological sister of the applicant.

Both are residents of Osirima village, Apapai Parish, Apapai S/county in Kalaki District. Copies of their national IDs and letters of introduction from the LC1 of this area were attached to the application.

- 15 The LC1 Osirima village, Apapai Parish, Apapai S/county in Kalaki District introduces both Osuku and Aliano as true residents of this area, as the biological father and sister of the applicant.

Under **Section 15(4)(b) of the Trial on Indictment Act and paragraph 13 (I) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice)**

- 20 **Directions**, it is provided 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.

**Paragraph 15 of the Constitution (Bail Guidelines for Courts of Judicature)**

- 25 **(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—**

- (a) the age of the surety;  
30 (b) work and residence address of the surety;  
(c) character and antecedents of the surety;

5 (d) relationship to the accused person; and

(e) any other factor as the court may deem fit.

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

10 (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 where the surety is ordinarily resident; or

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

15 Just like the applicant, the sureties' national identity cards bare a different residence than that on their current fixed place of abode.

With Osuku Bosco's card indicating Amen 'B', Amen, Soroti and Aliano Ruth's card indicating Asingei cell, Madera Ward, Soroti.

20 However, this anomaly is not fatal as people keep moving from place to place depending on various factors and could be registered from another place.

However, given that the LC1 of their current area of residence has confirmed their location and presence in Osirima village, Apapai Parish, Apapai S/county in Kalaki district, then I am satisfied that they are  
25 genuine residents who are resident within the jurisdiction of this Honourable Court and are substantial as they are very close relatives of the applicant and as such are capable of compelling him to attend court and in the event that they fail to do so, they are alive to the consequences of the applicant absconding and their duties to this  
30 honourable Court.



5    4. Bail Conditions:

- a. The Applicant to deposit a Cash bond of Shs. 2,000,000/-.
- b. Each of the sureties of the applicant is bound to the State of Uganda in the sum of Shs. 5,000,000/- not cash.
- c. The Applicant, together with each of his sureties, are directed  
10       to submit a copy of their national IDs and a recent passport  
         photograph to the Registrar of this court and to the Chief  
         State Attorney Soroti for the record.
- d. The Applicants to report to the Registrar of the Court once a  
         month on the first Monday of each month with effect from  
15       04/09/2023 until otherwise directed by court.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

29<sup>th</sup> August 2023

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