

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA SITTING AT MUKONO
CRIMINAL MISCELLANEOUS APPLICATION NO. 67 OF 2022**

(ARISING CRIMINAL CASE A-193)

WAMALA BENON..APPLICANT

VERSUS

UGANDA.....RESPONDENT

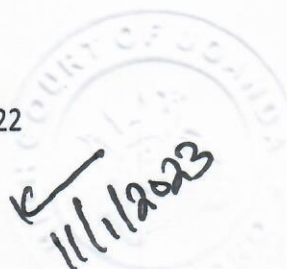
RULING

This is an Application brought by way of Notice of Motion under the provisions of Articles 23 (6) and Article 28 (3) of the Constitution of the Republic of Uganda 1995 as amended, seeking that Wamala Benon , the Applicant, be released on bail pending trial.

The grounds of the bail application stated in the Notice of Motion filed on 28th September 2022 and the supporting affidavit of the Applicant are summarized as follows;

That the Applicant

was arrested on the 29th July 2019 and has been remanded for over three years; he was committed for Trial on 29th November 2019 and the case has


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never been fixed for hearing; he has substantial sureties within the jurisdiction of the Court who are ready to ensure his attendance in Court.

Further, he has a fixed place of abode at Wabusolo, Buikwe District within the jurisdiction of this Court; and has a constitutional right to apply for bail.

The application is supported by the affidavit of the Applicant and more or less repeats the contentions in the motion, which I shall for brevity, not repeat. The application is also supported by an affidavit deposed by the Applicant on 27th September 2022. In his affidavit the Applicant avers that he was detained and his relatives did not know his whereabouts until January 2022 and that he was falsely accused of aggravated defilement actuated by land wrangles with his neighbors.

Counsel introduced the two sureties before Court and presented their original National Identity Cards and letters from the LC of their area, these are ;

1. Kyabasinga Joseph CM670821059C51, a 55 M/A peasant farmer, and resident of Namulesa Village, Namulesa Parish, Ngogwe Sub county, Buikwe District
2. Kituuma Adoni Masakate CM560 32108VVUJ, who is in the business of laundry, "DOBI" and earns about Shs. 150,000/= per month. He is an in law to the Applicant and married his aunt.



He presented the two sureties in Court and prayed that the Court finds them substantial.

Learned Counsel Mr. Mugisha Michael Collins who represented the Applicant based his submissions on the above grounds and the supporting affidavits, for brevity, I will not repeat the arguments of counsel which were grounded in the application.

The main crux of this application is that the Applicant has spent more than 480 days on remand pending committal and that Section 16 (b) of that TIA Enjoins the Court ; “*the judge before whom he first appears after the expiration of the relevant period shall release him or her on bail on his or her own cognizance, not with-standing that the he or she is accused of an offence referred to in Section 15(1) unless....*”

The Respondent relied on an Affidavit deposed by Ms. Sheba Byakutaaga deposed on 9th January 2023 and filed in court on the same day, she states that she is employed by the Office of the Director of Public Prosecutions (ODPP) as a State Attorney; the applicant is charged with a grave offence of aggravated defilement which carries a maximum penalty of death upon conviction thus a high likelihood of him absconding; save for the Applicant stating that he has a fixed place of abode there has been no attempt to prove that averment; the sureties sought to be presented do not show any relationship with the Applicant; the National Identity Card of the Applicant



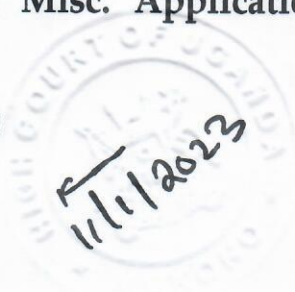
has not been presented and there are no exceptional circumstances for this Court to consider.

The Respondent was represented by Ms. Nanyonga Josephine who expounded on the grounds for opposing the application as contained in the affidavit in reply. Similarly, I will not repeat all the arguments of Counsel.

ANALYSIS AND DETERMINATION

This Court shall consider the following in deciding whether or not to grant bail as was expounded in; *Abindi and Another versus Uganda, Miscellaneous Application 20 of 2016*); the personal circumstances of the accused/applicant, the circumstances of the crime and other relevant information which includes; the seriousness of the offence; the need to protect the victim or victims of the offence; protection of the community from further offending; the strength of the prosecution's case; the severity of the possible sentence; the probability of conviction; the prior criminal history of the accused; the potential to interfere with prosecution witnesses; the possible delay in conducting the trial; the requirements for preparing a defence; and the view of the police Criminal Investigations Department and Prosecution.

The Applicant presented two sureties who appeared in Court and he prayed that the Court finds them substantial. **In Masaba Geoffrey versus Uganda, Criminal Misc. Application No. 0038 of 2016** it was held that "the



requirement for and duties of sureties cannot be underestimated, for they are seen by court as the members of the public who will police the applicant in his area of residence and ensure his attendance at the trial. They therefore must be persons of integrity, mature and have close geographical and where possible blood proximity to the applicant."

Upon examination of the sureties and documents in support, I make the following observations;

The offence for which the Applicant is indicted is a serious offence which upon conviction attracts the maximum sentence of death and it was admitted by the Respondent that even though the Applicant was committed his case has not been heard. There was no reason advanced for the delay in having this matter heard. It is not disputed that the Applicant has been in incarceration since July 2019, which is approximately 3 years and 6 months.

There is a likelihood of abscondment or jumping bail in matters of this nature unless the Court is assured that the sureties presented are of high caliber and able to perform their duties without hinderance. In the instant case, the Court is convinced by the antecedents of the sureties that have been presented and will thus exercise its discretion in favour of the Applicant.

Save for the offence carrying a maximum sentence of death upon conviction, the Respondent has not shown any other reason for the suspicion that the

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Applicant may jump or abscond bail. The time that has been spent on remand in my view is lengthy and no reason has been advanced for the failure of the Respondent to prosecute the Applicant in a timely manner. There is no proof or suspicion that the Applicant is not a law abiding citizen and this Court opines that the offence of aggravated defilement, though grave; is fairly easy to prosecute and by the time of indictment the vital evidence from the victim should be within the Respondent's reach, and thus there is no indication that investigations would be interfered with.

I have considered the second limb of Section 16 (b) and I have not received any reason for detaining the Applicant further in lieu of public safety.

I therefore allow this Application with no order to costs with the following conditions;

1. That the Applicant shall pay a bond of Shs. 1,000,000/= not cash.
2. That the sureties shall be bound in the amount of Shs.1,000,000/= each cash.
3. That the Applicant shall report to the Deputy Registrar of this Court every 1st Friday of the Month.
4. Direct that the Prosecution have this matter fixed for hearing in the next available session.
5. That the Applicant shall deposit his passport or travel document, if any, with the Deputy Registrar of this Court.



6. The State shall not issue any travel document to the Applicant during the pendency of the Trial.
7. The Applicant is cautioned not to interact or in any way interfere with the Prosecutorial witnesses.
8. That the Applicant shall present his National Identity Card or the application before posting bail.

Dated at Mukono this 11th day of January 2023.



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**HON. LADY JUSTICE CHRISTINE KAAHWA
JUDGE**