

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT MUKONO
CRIMINAL MISCELLANEOUS APPLICATION NO. 81 OF 2022
(ARISING CRIMINAL CASE 002 OF 2022 AT GOMA)

KINOBE SIMON:.....APPLICANT

VERSUS

UGANDA:.....RESPONDENT

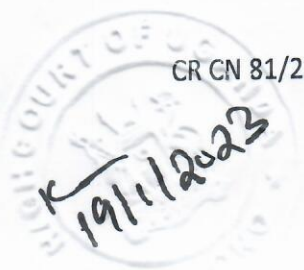
BEFORE HON. LADY JUSTICE CHRISTINE KAAHWA

RULING

This is an Application brought by way of Notice of Motion under the provisions of Articles 23 (6) of the Constitution of the Republic of Uganda 1995 as amended, Section 14(1) of the Trial on Indictments Act (TIA) Cap 23 and Regulation 2 (1) of the Judicature (Criminal Procedure) (Application) Rules SI 13-8 seeking that Kinobe Simon, the Applicant, be released on bail.

The grounds of the bail application are stated in the Notice of Motion filed on 4th November 2022 and the supporting affidavit of the Applicant are summarized as follows;

That the Applicant was brought before the Goma Magistrates Court on the 29th March 2022 for a plea of aggravated defilement contrary to Section 129(3) of the Penal Code Act, Cap 120 and was thereafter remanded to prison pending completion of investigations and subsequent committal to the High Court. That since then the matter was adjourned on several occasions and dates fixed by court on the grounds that the respondent and Police had



not finished the investigations; the Applicant had clocked the mandatory 180 days on remand and has substantial sureties; that he shall not interfere with the investigations if bail is granted and that it is fair and equitable and to prevent a miscarriage of justice.

The Applicant's affidavit evidence re-echoes the motion but additionally states that he has a fixed place of abode and substantial sureties namely; Haroon Kizza, a family friend and holder of National Identity Card No. CM66032105K5NL and Nalukwango Harriet, a sister and holder of National Identity Card No. CF80032102X73. That he is willing to comply with all the bail terms and conditions of this honorable court if his application is granted and has sureties who understand their duties.

Counsel introduced them before Court and presented their original National Identity Cards and letters from the LC of their area and prayed that the Court finds them substantial.

Learned Counsel Mr. Twongire Bartholomew who represented the Applicant based his submissions on the above grounds and the supporting affidavit. For brevity, I will not repeat the arguments of counsel which were grounded in the application. Counsel emphasized the fact that the Applicant had spent 180 days on remand without committal and he is therefore entitled to be released on bail.

The Respondent relied on an Affidavit deposed by Nanteza Victoria on 9th January 2023, 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

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sentence of death upon conviction and therefore there is a likelihood of absconding; the applicant is not yet committed to the High Court and has spent 180 days on remand he is ready for committal to the High Court; the sureties sought to be presented have not shown what they do for a living and cannot compel the Applicant to attend court and that the Applicant has not proved any exceptional circumstances to justify release on bail.

The Applicant deposed and filed an affidavit in rejoinder wherein he stated that his sureties were substantial and he shall abide the bail conditions set by court, if a grant is made. The parties also filed written submissions.

The Respondent was not represented when this matter was called for hearing.

In their written submissions, the Respondent opposed the grant of bail and stated that it is in the interest of justice that the Applicant is not released considering the gravity of the offence and the severity of the sentence that may be imposed by the Court.

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

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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.

In **Henry Bamutura versus Uganda Misc. Application 19 of 2019**, **Hon Lady Justice Prof. Tibatemwa-Ekirikubinza** stated that hardship, if any, facing an Applicant, are no exceptional or unusual factors for consideration in a bail application. I have no reason to depart from that reasoning.

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."*

The Applicant presented two sureties who appeared in Court and he prayed that the Court finds them substantial.

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

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- i. The Applicant has not produced an introductory letter from his area of residence and it is therefore difficult to ascertain if the Applicant has a residence within the jurisdiction of the Court.
- ii. There is an unexplained discrepancy between the area of residence as indicated in the introductory letter of Nalukwago and the area of origin as indicated on her National Identity Card. The court is left at a loss to determine whether indeed the Applicant and the surety reside in the same area for purposes of ensuring the fulfilment of bail terms if bail is granted.
- iii. The other surety Haruna is found to be a substantial surety and understood his duties.
- iv. Perusal of the file of the lower court indicates that the victim is disabled and was 14 years old at the time of the commission of the crime. This Court is of the view that she should continue to be protected since the Applicant has HIV deficiency.

In the circumstances the Court is not persuaded to exercise its discretion in favour of the Applicant since his antecedents and those of Nalukwago are lacking. The Application is dismissed with no order to costs.

Dated at Mukono this ^{19th}.....day of **January 2023**.



HON. LADY JUSTICE CHRISTINE KAAHWA
JUDGE

