

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL DIVISION
MISC. APPLICATION NO.059 OF 2024
ARISING FROM CRIMINAL SESSION CASE NO.47 OF 2024
MUSOKE GODFREY KABAYIZA Alias MUSTAFA
APPLICANT

VERSUS

UGANDA

RESPONDENT

BEFORE HON: JUSTICE ISAAC MUWATA

RULING

The applicant filed this application seeking to be granted bail pending the hearing and disposal of his case.

The grounds of the application are contained in the affidavit in support deposed by the applicant. The grounds are briefly that;

That the applicant is charged with aggravated defilement contrary to section 129(3)(4) (c) of the Penal Code Act. That the applicant was committed for trial and it's not known when the trial will take place. That it's the applicant fundamental right to apply for bail and that he is presumed innocent until presumed guilty

The applicant also contends he has a fixed place of abode within the jurisdiction of this court. It is also further contended by the applicant that he is sickly, suffering from severe hypertension, chronic allergic Rhinitis, chronic, and allergic conjunctivitis. It is argued by the applicant that these diseases are chronic in nature and require specialized medical attention outside prison.

The applicant also contends that he has substantial sureties, will not abscond and it's in the interests of justice that the applicant is granted bail.

The respondent filed a reply opposing the application on grounds that the applicant has not demonstrated exceptional circumstances, that there is a high likelihood of the applicant interfering with the witnesses. The respondent also contends that the applicant has not shown that he has a fixed place of abode and that there is likelihood that the applicant will abscond if granted bail.

Counsel Ochieng Evans represented the applicant while State Attorney Timothy Amerit holding brief for Ainebyona Happiness represented the respondent.

Consideration

Article 23(6)(a) provides that where an accused person is arrested in respect of a criminal offence, he or she has a right to apply to court to be released on bail, and the court may grant that person bail on such conditions as the court considers reasonable.

The grant of bail therefore is at the discretion of court and is not automatic.

In this application, it is mainly contended by the applicant that his condition presents exceptional circumstances for the court to grant him bail. That he is sickly, suffering from severe hypertension, chronic allergic Rhinitis, chronic, and allergic conjunctivitis. It is argued by the applicant that these diseases are chronic in nature and require specialized medical attention outside prison.

Section 15(1)(a)(b) of the TIA provides inter alia that the court may grant bail to a person who proves to the satisfaction of court that exceptional circumstances exist justifying his or her release on bail.

Although it is no longer mandatory for an accused person to prove exceptional circumstances, an accused person who establishes exceptional circumstances stands a better chance of being granted

bail if he or she can satisfy the court that they will not abscond or prejudice the administration of justice if granted bail. **See: Nyanzi Yusuf Siraj Vs Uganda Criminal Misc. Appl. No. 134 of 2021**

In the instant case, the applicant adduced evidence of a medical report from Uganda Prisons Service as requested by the applicant. The letter is marked as F2. In the letter, it is noted that due to the applicant's condition of severe hypertension, prison conditions may not be conducive to his health. With this evidence, I find that the applicant has satisfied court that exceptional circumstances exist to warrant his release on bail. The condition of the applicant may not be properly managed while the applicant is on remand.

The sureties presented in court also appeared substantial, they appeared to have control over the applicant.

Accordingly, the applicant is granted bail on the following terms;

- 1. He shall deposit a cash bail of shs. 1,000,000/=**
- 2. Each of the sureties presented in court shall execute a non-cash bond of shs. 5,000,000/=**
- 3. The applicant shall also report to the Deputy registrar of this court every last Monday of the month beginning 29th April 2024**

I so order.

JUDGE

16/04/2024.

