

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT MBARARA**  
**MISCELLANEOUS CRIMINAL APPLICATION No. 103 OF 2019**  
**(Arising from H.C Cr. Case. No. 392 of 2018)**

**NAMPEJJA MELON:.....APPLICANT**

**VERSUS**

**UGANDA:.....RESPONDENT**

**BEFORE: HON JUSTICE SSEKAANA MUSA**

**RULING**

This is an application for bail pending trial brought under Article 23 (6) (a) of the Constitution, Section 14 of the Trial on Indictments Act and Rule 2 of the Judicature (Criminal Procedure Application) Rules.

The applicant is charged with the offence of kidnap with intent to murder contrary to sections 243 of the Penal Code Act Cap 120. It is alleged that the applicant and a one Kangye Emmanuel on the 7<sup>th</sup> day of March 2018 at kakika Cell Mbarara District kidnapped Atwebembera Justus with the intent to murder him.

This application was supported by the affidavit of the applicant whose grounds are briefly that;

1. That the applicant is suspected to have committed the offence of kidnap with intent to murder C/S 243 of the Penal Code Act and is therefore presumed to be innocent.
2. That it is the constitutional right of the applicant to be released on bail.
3. That the offence with which the applicant is charged with is bailable by thus Honourable court.

4. That the applicant will not abscond from attending court once she is released on bail since she has a fixed place of abode in Kyatoko Village, Rubindi Sub-county, Kashari County, Mbarara District within the jurisdiction of this Honourable court.
5. That the applicant has substantial sureties ready to guarantee her return for trial.
6. That it is fair, reasonable and in the interest of justice that this application be granted.

The application was opposed by counsel for the state who prayed that the same be dismissed.

At the hearing, the applicant was represented by Brian Muhanguzi while the state was represented by Izikuru Gloria.

The applicant presented 3 sureties namely;

1. Tumusiime Yosam aged 63 years a farmer from Kyatoko village Kariro Parish and a maternal uncle to the applicant.
2. Ayebazibwe Irene resident of Kitooma II cell, Kyera Birere Isingiro aged 41 years, a farmer and a maternal aunt to the applicant.
3. Tusingwire Caroline aged 31 years resident of Kitooma cell II, a farmer and sister to the applicant.

Persons accused of criminal offences have a right to apply for bail as per *Article 23 (6) (a) and 28 (3) of the Constitution of the Republic of Uganda* however the power to grant or not grant bail is entirely within the discretion of court, which discretion ought to be exercised judicially

For an applicant to be granted bail, they ought to present sound sureties who will ensure their attendance in court, and who can be called upon in the event that they abscond. 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 their area of residence and ensure their attendance for the trial. They therefore must be persons of integrity,

mature and have close geographical and where possible blood proximity to the applicant.

In this case, the sureties presented are not geographically close to the applicant which makes it hard for them to ensure the applicant's appearance in court once released on bail.

I concur with counsel for the state that in the event she is granted bail the sureties will not be able to exercise control over her.

I therefore deny the application for lack of substantive sureties.

Secondly, the nature of the offence of kidnap with intent to murder is a grave offence and currently it so rife in the country. This court has a duty to protect society and also avoid a possible repeat of the offence once the applicant is released on bail.

This court would not exercise its discretion to grant bail to the applicant.

The application is accordingly dismissed.

I so order.

**SSEKAANA MUSA**

**JUDGE**

**24<sup>th</sup> January 2020**