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The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Miscellaneous Application No. 0059 of 2023

(Arising from Criminal Session Case No. 0140 of 2023)

10

1. Esaete Mikaya

2. Okello Silver

..... Applicants

Versus

Uganda Respondent

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Before: Hon. Justice Dr Henry Peter Adonyo

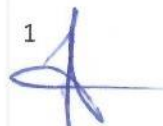
Ruling on Bail:

1. Introduction.

This is an application by way of Notice of motion brought under Articles 2(1), 23
(6)(a) & 28 (1) & (3) of the Constitution of Uganda and sections 14 and 15 (1)(b)(c)
of the Trial on Indictment Act for orders that bail be granted to the applicant.

2. Grounds.

The grounds of the application as set out in the application and supporting
affidavit sworn by the applicants are that the applicants are charged with murder
contrary to section 188 & 189 of the Penal Code Act. That the applicants'
constitutional right to a speedy trial has been violated while they are presumed
innocent until proved guilty.



5 The applicants in their respective affidavits in support state that sometime in April 2023 they were arraigned in Kumi Magistrates Court where they were remanded in Kumi Government prisons and later transferred to Soroti. That although they have been committed for trial in the High Court, it is not known when the trial will take place and their stay in custody is uncertain. That they are
10 presumed innocent until proven guilty and have the right to apply for bail. That they have a fixed place of abode at Otiye Cell, Otiye Ward, South Division in Kumi Municipality within the jurisdiction of this court. That they have substantial sureties and are willing to abide by the bail conditions set by court.

The respondent in an affidavit in reply sworn by State Attorney Okello Paul
15 objected to this application on the grounds the offence with which the applicants are charged attracts maximum penalty of death upon conviction thus the applicants are most likely to abscond bail in fear of the severe sentence upon conviction.

That the prosecution is ready with its witnesses since the accused have been
20 committed for trial before this honorable court hence this application is intended to delay the hearing of the case.

That although the applicants have a constitutional right to apply for bail the grant is discretionary.

That no documentary proof such as land titles or tenancy agreements has been
25 adduced to prove fixed place of abode for both the applicant and the presented sureties, further the applicants have not presented their National ID cards.

That the respondent believes that this honorable court is taking considerable measures to ensure that the committed accused persons are cause listed for trial

5 as soon as possible and there is no need for the applicants to dwell on uncertainties of when the case shall be heard.

3. Representation.

The applicant was represented by M/s Ebuut Associated Advocates and the respondent by the Office of the DPP Soroti.

10 This application proceeded by way of written submissions and the same will be considered in its determination.

4. Determination:

The law in relations to the grant of bail was well explained in the case of *Uganda (DPP) Vs. Col (Rtd) Dr. Kiiza Besigye, Constitution reference No. 20 of 2005* where it
15 was held that an accused person has the right to apply to court to be released on bail with the court having the discretion of whether to grant bail in accordance with the provisions of Article 23 (6) (a) of the Constitution of Uganda, 1995 which provides thus;

Where a person is arrested in respect of a criminal offence—

20 (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;

Capital offences such as murder in this instance are bailable, however, whether the court is inclined to exercise the discretion to grant or not is a matter dependent on the circumstances of each case.

25 In regards to the High Court, the above constitutional position above is amplified by Section 14(1) of the Trial on Indictment Act thus;

(1) The High Court may at any stage in the proceedings release the accused person on bail, that is to say, on taking from him or her a recognisance

5 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, Section 15(1) of the Trial on Indictment Act provides that;

10 Notwithstanding section 14, the court may refuse to grant bail to a person 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.”

In this section, “exceptional circumstances” means any of the following—

15 (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 Prosecutions; or

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

20 Section 15(4) of the Trial on Indictment Act provides that;

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;

25 (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;

5 (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

(d) whether there are other charges pending against the accused.”

While considering any bail application, a court is encouraged to take into account The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions,
10 2022 issued by the Chief Justice of Uganda.

Under paragraph 5 the general principles applicable in the consideration of a bail application are provided thus;

The court shall, in considering a bail application, be guided by the following principles as enshrined in the Constitution—

15 (a) the right of an applicant to be presumed innocent as provided for in 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 court
20 considers reasonable; and

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

Under Paragraph 12 an application for bail is required to contain the particulars of the applicant and accompanied by—

(a) a copy of the applicant’s national identity card, or passport or aliens
25 identification card, or employment card, or student identity card;

(b) an introduction letter from the Local Council 1 chairperson of the area where the applicant resides;



- 5 (c) where applicable, asylum seeker or refugee registration documents issued by the Office of the Prime Minister; and
- (d) expounded grounds for the application.

After expounding on the position of the law and the requirements necessary for consideration of a bail application, I now turn to this this application.

- 10 a) Fixed place of abode:

Both the applicants state under paragraph 9 of their affidavits in support of the application that they have a fixed place of abode at Otipe Cell, Otipe Ward, South Division in Kumi Municipality within the jurisdiction of this court.

- 15 Introduction letters marked 'B' and 'C' were attached to the application, these letters dated 1st of September 2023 from the LC1 Otipe Cell indicate that the applicants are true born and residents of his area of jurisdiction. That the applicants have stayed in his area for 40 and 63 years respectively.

- The applicants did not attach any form of identification to the application. However, I find the letters of introduction from the LC1 in respect of the applicants and further, the letters of introduction from LC1 Otipe cell in respect of the sureties who are related to the applicants sufficient to identify the applicants as residents of Otipe cell.
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In law, the essence of a fixed place of abode is traceability of an accused in the event of abscondment or whenever necessary.

- 25 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 position reflects is amplified by paragraph 13(k) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions.

5 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. Where the applicant fails to prove this under section 15(1) of the TIA the court may deny him bail.

10 In regard to this application, I am satisfied that the applicants have proved fixed place of abode by virtue of the letters from their LC1 and their identification card.

b) Substantial sureties:

The 1st applicant under paragraph 10 of his affidavit in support states that he has two sureties who include;

- 15 - Okello Joseph and A Josei James his paternal uncles both with a permanent place of abode in Otiye Cell, Otiye Ward, South Division in Kumi Municipality in Kumi District.
- Letters of introduction marked 'C2' and 'D2' from the LC1 of Otiye Cell dated 30th August 2023 indicate that the Okello Joseph and A Josei James are true residents of his area.
- 20 - Copies of their national IDs were attached and marked as 'C1' and 'D1'; Okello's national ID CM64079102U7DL indicates that he is 60 years old and his residence is Suula village in Bukedea District, that of A Josei CM68021101NEXG indicates he is 56 years old and resident of Otiye village in Kumi District.

25 The 2nd applicant under paragraph 10 of his affidavit in support presents the same sureties as the 1st applicant save for a third, his wife Alaso Mary with a permanent place of abode in Otiye Cell, Otiye Ward, South Division in Kumi Municipality in Kumi District.

5 An introduction letter marked 'E2' from the LC1 Otiye Cell dated 27th August 2023 indicates she resides in his area of jurisdiction. A copy of her national ID marked 'E1', CF77021103XC4J indicates she is 47 years old and resident of Atiide village, Otiye Parish in Kumi District.

10 The applicants herein are related with the 2nd applicant being the biological father of the 1st applicant. The sureties presented are 1st applicant's uncles and mother; the 2nd applicant's brothers and wife. The sureties and applicants all reside in the same village.

15 Counsel submitted that the sureties understand their obligations to this Honorable court and are ready to be presented before this honorable court for examination. He prayed this court finds them substantial.

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

- 20 (a) the age of the surety;
- (b) work and residence address of the surety;
- (c) character and antecedents of the surety;
- (d) relationship to the accused person; and
- (e) any other factor as the court may deem fit.

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

- (a) a copy of his or her national identity card, passport or aliens identification card;

- 5 (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.

Arising from the above, I find that the sureties presented as being substantial
10 given the proof of their identities, their connection to the applicants and their having fixed places of abode within the jurisdiction of this Honourable Court.

I have also considered the age of the sureties and the fact that they are the related by blood to both applicants and the fact that they stay within the same village with the applicants which does give them leverage in controlling and to
15 ensure that they attend court whenever called upon.

Article 28(3)(a) of the Constitution provides that all persons charged with criminal offences are presumed innocent till proven guilty. Bail is thus meant to safeguard the applicant's right to liberty because he is presumed innocent till proven otherwise. Furthermore, the court is directed to take into account the
20 seriousness of the offence upon which an applicant is charged with before granting or not granting bail. I have taken into account the seriousness of the offence brought against the applicants but nevertheless deem it fit that the applicants warrant grant of bail which I do so grant upon the terms set below.

5. Conclusion.

25 On the basis of the evidence put forward above, I am satisfied that this is a case where it should exercise its discretion and grant bail to the applicants pending trial. Bail is accordingly granted on the following conditions;

- 1) Cash bond of Shs. 1,000,000/- for each applicant.
- 2) Each of the Sureties is bound in the sum of Shs. 2,000,000/- not cash.



5 3) The applicants and each of their sureties are to provide a recent
 photograph, telephone numbers and copies national IDs to the Registrar
 of this court and to the Chief Resident State Attorney, Soroti for filing and
 record purposes.

10 4) The Applicant to report to the Registrar of the Court once a month on the
 first Monday of each month with effect from 07/05/2024 until otherwise
 directed by court.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

10th April 2024

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