

UGANDA / JUDGMENT

# Abacha v Uganda (Miscellaneous Criminal Application No. 0004 of 2016)

## [2016] UGHCCRD 82 (26 July 2016)

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## COURT

HC: Criminal Division (Uganda)

## BEFORE

Stephen Mubiru, J

## CASE / FILE NUMBER

Miscellaneous Criminal Application No. 0004 of 2016

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## THE REPUBLIC OF UGANDA

## IN THE HIGH COURT OF UGANDA SITTING AT ARUA

## MISCELLANEOUS CRIMINAL APPLICATION No. 0004 OF 2016

(Arising from H. C Cr. Case. No. 0120 of 2015)

ABACHA YASSIN } ..... APPLICANT

## VERSUS

UGANDA ..... RESPONDENT

Before: Hon Justice Stephen Mubiru.

## RULING

This is an application for bail. The applicant is indicted with one count of Aggravated Defilement c/s 129 (3) and (4) (a) of the \*Penal Code Act\*. It is alleged that on 2nd February 2015 at Muru Cell in Arua District, he had unlawful sexual intercourse with a one Suraya Birayi, a girl under the age of fourteen years. He was on 19th June 2015, committed for trial by the High Court. He is yet to be tried and hence this application for bail pending his trial.

His application is by notice of motion under Article 23 (6) (a) of the \*Constitution of the Republic of Uganda\*, sections 14 (1) and 15 (2) (a), (3) (a) and (c) of the \*Trial on Indictments Act Cap.23\*. It is dated 9th February 2016 and it is supported his affidavit sworn on 3rd February 2016 and that of his wife, Ajio Safia, sworn on the same day. The main grounds of his application as stated in the notice of motion and both supporting affidavits are that; this court has discretion to grant bail, the applicant has been on remand for over one year without trial yet he is presumed innocent, he

has a fixed place of abode at Arua Public Cell, Bazaar Ward, Arua Hill Division, Arua Municipality, Arua District within the jurisdiction of this court, his family is suffering due to his incarceration, he has substantial sureties willing to guarantee his attendance of court and he suffers from a number of physical ailments. He attached a photocopy of a medical report from River Oli Health Centre in Arua Municipality dated 2nd June 2016.

By an affidavit in reply sworn by a one No 55587 Detective corporal Idha Patrick Amaza on 22nd July 2016, who is the investigating officer of the case, the state is opposed to the grant of bail to the applicant mainly on grounds that; the gravity of the offence against him creates a high temptation to abscond yet he has already been committed for trial by the High Court and that there are no exceptional circumstances justifying his release on bail. The medical condition he is facing has been adequately managed by the prison authorities and most of his children are adults capable of looking after themselves and their young siblings.

At the hearing of the application, the applicant was represented by Mr. Henry Odama while the state was represented by Mr. Pirimba Emmanuel, State Attorney. Counsel for the applicant, in his submissions, elaborated further the grounds stated in the motion and supporting affidavit and presented two sureties for the applicant; Mr. Alia Nasuru Ali (a 42 year old motor vehicle mechanic and paternal uncle to the applicant) and Mrs. Ajio Safio (a 35 year old wife of the applicant). In his response, the learned State Attorney too elaborated further the grounds for opposing the application as contained in the affidavit in reply and in the alternative, prayed for stringent conditions in the event that the court is inclined to grant them bail.

The applicant seeks to rely on illness as one of his grounds. There are numerous authorities which emphasise that to qualify as grave, the illness must be certified by a medical officer of the prison, institution or place where the accused is in custody, for example; *\*Immaculate Lugolobi v Uganda\**, *\*H. C. Misc. Appn. No. 30 of 2003\** and *\*Capt. Wilberforce Serunkuma v Uganda, H. C. Misc. CR. App. No 129 of 1994.\** In the application before me, I have not been presented such a certificate from the Medical officer of that prison. I therefore agree with the learned State Attorney and find that the applicant has not proved that the illness he suffers from is of a grave nature as to constitute an exceptional circumstance. This ground is rejected.

In bail applications, courts should lean in favour of and not against the liberty of the accused as long as the interests of justice will not be prejudiced. It is for that reason that this court is empowered to exercise its discretion to grant bail even when none of the exceptional circumstances have been proved. Proof of exceptional circumstances is not mandatory. See *\*Foundation for Human Rights Initiatives vs. Attorney General Constitutional Petition No. 020 of 2006\**. When the court decides to consider the possibility of granting an applicant bail, who has failed to prove or is not relying on any exceptional circumstance, all that is required is for the applicant to offer such safeguards as are sufficient to overcome any concerns which the court may have about granting bail.

The only other serious objection advanced for denying the applicant bail in this case is his likelihood to abscond based on the seriousness of the charge against him. In *\*Hurnam v State of Mauritius\** [2006] 1 WLR 857\* and *\*R (Thompson) v Central Criminal Court\** [2006] A. C. 9,\* it was decided that the degree of temptation to abscond or the risk of failing to surrender owing to the severity of the likely sentence, if convicted is a matter to be assessed in the light of other relevant factors. The likely sentence could not of itself provide grounds for denying bail.

I have examined the circumstances in which the offence is alleged to have been committed as narrated in the summary of the case, annexure “A” to the affidavit. I am not persuaded that they give rise to a very high likelihood of the applicant escaping trial. His attendance of trial can be guaranteed by the imposition of rigorous terms as conditions for his release on bail. I am satisfied with the sureties that he presented in court as persons capable of guaranteeing his attendance of the trial. The learned State Attorney did not oppose their suitability either. They and the applicant all have fixed places of abode at Arua Public Cell, Bazaar Ward, Arua Hill Division, Arua Municipality, Arua District within the jurisdiction of this court.

In the circumstances I do find merit in the application and hereby order the accused to be released on bail on the following terms; -

1. The applicant is to execute and pay a cash bond of Shs. 3,000,000/=
2. Each of his sureties is to execute a non-cash bond of Shs. 10,000,000/=
3. The applicant is to report to the Assistant Registrar of this Court on the first Monday of every Month until the disposal of the case or further orders of the court.
4. The applicant is to report to the O/C C. I. D. of Awindiri Police post, the first Tuesday of every fortnight until further orders of this court.

In the circumstances, this application is allowed. I order the release of the applicant on bail subject to him meeting the above conditions, failure of which he is to be remanded. I so order

Dated at Arua this 26th day of July, 2016.

Stephen Mubiru

Judge.

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