

UGANDA / JUDGMENT

Addabu v Uganda (Criminal
Miscellaneous Application 11 of
2024) [2024] UGHC 719 (25 July 2024)
[2024] UGHC 719

COURT

High Court of Uganda

BEFORE

Acellam, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 11 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT ARUA

MISC. APPLICATION NO. 0011 OF 2024

(Arising from Criminal Case No. NEB 00 CR AA 024 OF 2024)

(Arising from NBB NO. 0582 of 2023)

<table> ADABBU FRANCIS APPLICANT

VERSUS

UGANDA::::::::::::::::::::::::::::

RULING

BEFORE HON. JUSTICE COLLINS ACELLAM

15 Brief Introduction

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This Application was brought by way of Notice of Motion under Article 23 (6) (a) & (c), 28(3) (a) of the 1995 Constitution of the Republic of Uganda as amended, Section 14 & 15 of the Trial Indictment Act Cap 23, section 33 of the Judicature Act, Cap 13 and clause 10(1), (2) & (3), 11(1) and (2) of the Constitution (Bail Guidelines for Courts of Judicature (Practice) Directions, 2021 for orders that;

1. The Applicant be released on mandatory bail pending his trial.

The Applicant lodged this application on the 12th April 2024 seeking to be released on mandatory bail pending trial of Criminal Case, NEB 00 CR AA 024. The Applicant is indicted on the offence of AGGRAVATED DEFILEMENT contrary to sections 129 (3) (4)(b) and (c) of the Penal Code Act Cap. 120 and remanded in custody at NEBBI Government Prison since 14th September, 2023.

Grounds of the Application

The grounds on which this Application is based on the affidavit in support deposed by ADABBU FRANCIS, the Applicant herein briefly;

- 1) The Applicant was arrested on the 8th September, 2023 and detained in the Police for a period of one (01) week until the 14th September, 2023 when he was charged in court with the Offence of Aggravated defilement and remanded to prison to date.
- 2) The Applicant was remanded to prison for the first time on the 14th September, 2023 where he has been detained to date.
- 3) The Applicant has not been committed for trial to the High Court.
- The Applicant has now spent over 180 days stipulated under the Constitution on remand \$(4)\$ without being committed to the High Court for trial and has clocked the mandatory period for him to be released on mandatory bail.
- 5) The Applicant is presumed innocent until proven guilty and the offence with which the Applicant is charged with is bailable by this court.
- 6) That the Applicant has a fixed place of abode at Onjukku Lower Cell, Forest Ward, Thatha Division in Nebbi Municipality, Nebbi District within the Jurisdiction of this Honourable Court.

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That the Applicant has substantial sureties to guarantee his return to court to stand trials \$(7)\$ and it is in the interest of Justice that the Application is allowed.

Grounds in Opposition

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In Opposition to the Application, ANGUMALE SIMON, a Resident Senior State Attorney deponed an affidavit opposing the Application briefly on grounds that the Accused/ Applicant is already committed to the High Court for trial, and they are ready to prosecute the said \$10.\$ Applicant. That the Applicant has not sufficiently proved that the Prison medical facilities can't manage his medical condition, and that the Applicant is likely to abscond if released on bail since in the introduction letter by the LC1 Chairperson, its not clear whether the Applicant owns the permanent building or proof of ownership thus the Application should be denied.

15 Grounds in Rejoinder.

In rejoinder, the Applicant contend that the Affidavit in reply has no merits as the Respondent hurriedly and maliciously committed him for trial in bad faith upon being served with his Application for mandatory Bail in order to frustrate and jeopardize his Application for mandatory. That the mere fact that he has been committed for trial belatedly after his application for mandatory bail had already been filed in this honourable court is not a guarantee that will promptly be tried on the alleged offence. He adds that he has a fixed place of abode at Onjiku Upper Cell, Forest Ward, Thatha Division in Nebbi Municipality where he bought a piece of land in 2014 and built a permanent house in which he and his family members live to date. Photocopies of the Sale Agreement and photographs of the house are attached. That he also has a small storey building in Nebbi Town along Pakwach Road next to PAG Church which I rent to Tenant. That he is also a married man with many dependants, and he is ready to abide by whatever conditions this honourable court deems fit to set. That he has spent 180 days before filing this Application and undertake to abide by all terms and conditions once released on bail.

ISSUE

Whether the Applicant has satisfied all grounds to warrant grant of the grant of Mandatory Bail.

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Determination

Court has duly considered the submissions of both counsel for the Applicant and Respondent, accessed the authorities on its own, considered them as well as those not cited in arriving at its decision. Court remains grateful to learned counsel for their physical address.

35 Position of the Law

Where a person is arrested in respect of a criminal offence, the person is entitled 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. See Article 23(6) (a) of the 1995 constitution.

Bail is the release from custody by a court of law of a person accused of a criminal offence after such person has entered a recognizance consisting of a bond with or without sureties, for a 40 reasonable sum of money to the effect that he or she would appear before court for his or her trial. (See BJ ODOKI, A guide to Criminal Procedure in Uganda 2nd Edition 1990 at page 71, Aganyira Albert Versus Uganda, Criminal Misc. Application No. 0071 of 20-23.

Bail is a fundamental aspect of any criminal justice system that guarantees the accused the right to a fair trial. The practice of granting Bail grew out of the need to safeguard the fundamental 45 right to liberty.

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$\mathbb{R}^5 \cdot \mathbb{R}$ Under Article 23 of the Constitution of the Republic of Uganda, 1995, no person shall be deprived of his or her personal liberty unless so prescribed by a reasonable form and just procedure.

In the criminal law context, this freedom is embodied generally in the right to be presumed innocent until proven guilty and especially in the right of bail.

The object of bail is to ensure that the accused person appears to answer the charge against him or her without being detained in prison on remand pending trial. The effect of bail is therefore to temporarily release the accused person from custody. SEE OPIYO Charles Alias Small Vs Uganda, Criminal Miscellaneous Application No. 26 Of 2022

The paramount consideration for granting or refusing to grant bail is to strike a balance between 15 individual rights and the interest of society. In other words, bail is devised as a technique for affecting the synthesis of two basic concepts of human values, namely, the right of the accused person to enjoy her personal freedom and the public interest, subject to which the release is conditional on the surety to produce the accused person in court to stand his or her trial. See 20 Ssendaula Eria Vs Uganda Criminal Miscellaneous Application No. 9 Of 2018.

The right to personal liberty enjoins a right to apply for and be granted bail basing on courts discretion.

It is important therefore to take note of what Justice E. Lugayizi stated in Alipwasadi Matovu Vs. Uganda, Miscellaneous Criminal Application No. 15/2005

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"That in matters under consideration and in other matters of bail, court must bear in mind a few important principles;

- a) Firstly, that right to bail is not automatic.
- b) Secondly, that article 23(6)(a) of the constitution limits courts discretion in such

- 30 Matters to setting conditions that would guarantee the return of the accused person to court to answer the charges against him or her before releasing him or her on bail.

The rationale behind this reasoning is that the constitution recognizes the presumption of innocence as a fundamental human right and therefore, such recognition is not in vain and should lead to the liberty of an accused person.

Further, the discretion to grant bail under Article 23 (6) of the constitution of the Republic of Uganda, 1995 and section 14 of the Trial Indictment Act, Cap 23 should be balanced between two conflicting demands, that is, shielding the society from misadventures of the person allegedly involved in the crime and presumption of innocence of the accused till he or she is proved guilty ² or pleads guilty as stipulated under Article 28 (2)(a) of the Constitution of the Republic of Uganda.

Hon. Justice Musene (As he then was) held that the court is given or left with the discretion to grant or refuse bail. It must always be born in mind that where any legislation confers upon court 45 the discretion to do or refrain from doing a grant or refuse to grant a relief sought, such discretion must be exercised without any malice, ill will, ulterior motive or regard to external influence or circumstances. SEE COL (RTD) DR. BESIGYE KIZZA VS UGANDA, H. C KAMPALA CRIMINAL APPLICATION NO. 83 OF 2016.

- However serious the nature of the charge against the accused, it remains an allegation until S proved. The seriousness of the offence must be balanced against the application of the presumption of innocence and other relevant factors when considering whether or not to grant bail. See Ssendaula Eria Vs Uganda Criminal Miscellaneous Application No. 9 of 2018.
- The law is well settled in cases where the Applicant is charged with a very grave offence in respect
- of which the law stipulates that in order to be released on bail; the applicant must prove 10 exceptional circumstances.

The test this court has set is that the burden is upon the Applicant to satisfy court by putting forth before court a set of facts beyond the ordinary consideration for bail upon which the court can act in exercise of its discretion to admit the Applicant on bail . SEE Bongomin Richard Vs Uganda, H. C. MISC. APPLICATION NO. 0057 OF 2008 (UNREPORTED)

Section 15 (1), (3) & 4 of the Trial Indictment Act sets conditions under which court may refuse to grant bail. It provides thus;

- (1) 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;
 1. that exceptional circumstances exist justifying his or her release on bail; and

2. that he or she will not abscond when released on bail.

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

- 1. 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;
- 2. a certificate of no objection signed by the Director of Public Prosecutions; or
- 3. The infancy or advanced age of the accused.

In considering whether or not the accused is likely to abscond, the Court may take into account the following factors-

- 1. Whether the accused has a fixed abode within the jurisdiction of the court or is ordinarily 30 resident outside Uganda;
 - 2. Whether the accused has sound securities within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail;
 - 3. Whether the accused has on a previous occasion when released on bail failed to comply with the conditions of his or her bail; and 35
4. Whether there are other charges pending against the accused.

Existence of a fixed place of abode

There is always a concern as to whether the Applicants if granted bail will return to face trial. Therefore, conditions ought to be met to eliminate such risks especially for offences that infer great/severe penalties.

Regarding the consideration of whether the Applicants has a fixed place of abode, it is trite that the onus is on the Applicant to satisfy court that he or she has a permanent place of abode within the jurisdiction of court and that he or she is not a resident outside Uganda.

The onus of proof is on the Applicants to satisfy court that he has a permanent place of abode in a particular known village, sub-county, county and district. See Mugenyi Steven Vs 45 Uganda Criminal Misc. Application 65/2004, Justice Remmy Kasule (as he then was)

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This in my view, is to enable court exercise jurisdiction over the Applicant while on bail and to 5 be able to trace his or her whereabouts whenever necessary.

In the instant Application, counsel for the application submits that the Applicant has a fixed place of abode within the Jurisdiction of this honorable court. There is evidence on record to back up this assertion. What amounts to a fixed place of abode within court's jurisdiction is a

matter of evidence and not mere speculation. In my view, having a fixed place of abode means a 10 permanent place of residence, or a place of stay for some time or a place where someone ordinarily resides. It is a place where the Applicant can with certainty or at least predictability be traced if required. Having a fixed place of abode is a question of fact.

Clause 12 of the Bail Guidelines requires that an Applicant provide a copy of their national Identity card and an introductory letter from the LC1 Chairperson of the area where the Applicant resides.

In all clarity, these documents are meant to provide the essential details showing that the Applicant can be easily tracked down and located if required.

In absence of the above, the Applicant falls short of an indispensable requirement.

- 20 On record, there is an introduction Letter of the LC1 of Onjuku Upper Cell, Forest Ward, Thatha Division, Nebbi Municipality wherein the LC1 Chairperson, a one ONGOM JOHN BERO introduces the Applicant as a resident of the above address and has lived in this area for a long period of time. The same address was backed up by the Applicant's national Identification Card with NIN: CM800331077DZE.
- This shows that the Applicant is from within the Jurisdiction of this honourable court, and he resides permanently within the Jurisdiction of court.

Existence of Substantial sureties

This court has also considered the three sureties presented before this court by the Applicant's counsel. The sureties were presented and identified by their national ID as follows;

- 1) ADIGA ROBSON, 39 years of age, resident of Onjuku Lower Cell, Thatha Division, Forest Ward, Nebbi Municipality Nin: CM85002108TJ6F, A Head Teacher of Nebbi Baptist Mixed Christian Secondary School and brother to the Applicant . Tel: 0782138167. The relationship between him and the Applicant was clearly spelt out. The national Identification Card and LC1 Introductory letter signed by LC1 Chairperson AJARUVU ALFRED was filed on record.
- 2) KUMAKECH GODFRED, 42 years of age, resident of Onjuku Lower Cell, Thatha Division, Forest Ward, Nebbi Municipality. a Businessman / Farmer dealing in secondhand clothes at Nebbi main Market and a brother- in -law to the Applicant. Tel No. 0777909200/ 0758121657. The relationship between him and the Applicant was clearly spelt out. The national Identification Card and LC1 Introductory letter signed by LC1 Chairperson AJARUVU ALFRED was filed on record.

- 3) OJOK JOHN KENNEDY, 51 years old, resident of Bweyale Cell, Central Ward, Bweyale Town Council in Kiryandongo District. He is a farmer in Bweyale and an Elder Brother to the Applicant. Tel: 0782740288 and NIN: CM72033101A0YEM. The National Identification Card and LC1 introductory letter signed by the LC1 Chairperson, a one ABOLA RICHARD was filed on record.

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The sureties presented to this honourable court are satisfactory. When asked of their duties, they could clearly relate to this honourable court their duties as sureties.

In Halsbury's Laws of England, 4th Edition Vol 11-page 112-113 para 166 is thus;

"The effect of granting bail is not to set the Applicant free but to release him from the Custody of the law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place"

The substantiality of a surety is connected to the ability to ensure the Applicant makes appearance on the due date appointed by court for hearing. This is a capital offence and all doubts in respect to the return of the accused ought to be satisfied. The Sureties presented are brothers to the accused hence with their close family ties, he would not abscond knowing his abscondment would put his brothers in trouble. Therefore, in light of the above, the sureties presented before this honorable court are substantial.

Existence of exceptional circumstances

The supreme court of appeal addressed the meaning of exceptional circumstances in *S verses Bruintjies* 2003 (2) SACR 575 AT 577 as follows;

- 20 "What is required is that the court consider all relevant factors and determine whether individually or cumulatively they warrant a finding that circumstances of an exceptional nature exist which justify his or her release ". What is exceptional cannot be defined in isolation from the other relevant factors save that the legislature clearly had in mind circumstances which remove the Applicant from the ordinary run".
- This simply means that court can't deal with exceptional circumstances solely without reliance 25 on other factors/principles. Much as exceptional circumstances are no longer mandatory, the same ought to be exercised judiciously and where circumstances of the case warrant its consideration, the same shall be done to avoid defeat of Justice.
- On record, making reference to Annexure 'C' dated 5th of March, 2023 is a Medical Report from Omega Clinic -Nebbi for the Applicant signed by a one OKULLU ROGERS, medical 30 personnel at the above Clinic. In his report, he states that the Applicant is a patient suffering from lower Abdominal Pain, Chest Pain, Fever and Gastritis (A form of high stomach inflammation similar to Stomach Ulcers but in an acute form)

- I wish to note that in the instant Application, the Applicant has been on remand for a period of 180 days before his committal which was done 4 days before the Respondent filed the 35 Application but became known to the Applicant after the Respondent was served with this Application for Mandatory Bail. Nevertheless, the Applicant had already spent 180 days in prison before his committal. This however does not deter this Court from exercising its discretion as bail is a fundamental right though not Automatic.
- On the basis of evidence provided to this court, it is clear that the accused has a permanent residence with permanent building. A sale agreement and pictorial evidence of the buildings and its address was provided to this court and Marked 'C' and 'D' respectively. The sureties are his close family members within age brackets that can persuade, remind the accused of the date of trial. The paramount consideration is that the Applicant will not abscond from attending his 45 trial.
- On the basis of the evidence put forward by the Applicant, this court is satisfied that this is a case where this court should exercise its discretion to grant bail to the Applicant. Bail is therefore granted on the following conditions.
- 1) Each of the sureties will execute a non-cash bond of Ug. Shs. 10,000,000/= (Uganda shillings Ten Million only).
- 2) The Applicant to present two copies of his National Identity Cards, to be kept in the file by the Registrar of this court and the other kept by the Resident State Attorney on behalf of the Respondent.
- 3) The Applicants shall also deposit on court record 2 recently taken colour passport size photos, one to be attached to the file and the other to be kept by the Resident State Attorney.
- 4) Each of the Approved sureties of the Applicant shall each deposit on record 2 recently taken coloured passport size photos, each of the copy to be attached to the file and the other to be kept by the Resident State Attorney.
- 5) The Applicant is to report to the Deputy Registrar of this court on the 1st day of August, 2024 and thereafter as directed by Court.
- 6) Any failure to Adhere to these conditions shall lapse the bail terms above resulting into automatic issue of a Warrant of Arrest of the Applicants and cancellation of their bail in addition to the sureties to all being required to forfeit to the state the non-cash bond of Ug. Shs. 10,000,000/= (Uganda Shillings Ten Million only)

I SO ORDER. 25

COLLINS ACELLAM

JUDGE

DATED 30

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