

Andruale & 2 Others v Uganda
(Criminal Miscellaneous Application 3
of 2024) [2024] UGHC 714 (25 July 2024)
 [2024] UGHC 714

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RULING

This is an application by Notice of Motion under Article 23(6)(c) of the Constitution of the Republic of Uganda, Sections 14 and 15 of the Trial on Indictments Act; Rules 9,10,11 and 12 of the Constitution (Bail guidelines for Courts of Judicature) (Practice) Directions, 2022 seeking for orders

25 that the Applicants be released on Mandatory Bail pending the hearing of criminal case No. CO-0057-2024.

The grounds of the application as set out in the application and the supporting affidavit sworn by the Applicants, and they are as follows;

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- 1. The Applicants were arrested and charged with the offence of Aggravated Robbery contrary to section 285 and 286(2) of the Penal Code Act.
- 2. That it is the Applicants constitutional right to apply for mandatory bail as they have been on remand for more than one hundred and eighty days without being committed to the High Court.
- 3. The Applicants have sound and suitable sureties within the jurisdiction of this Court to undertake that the Applicants will comply with the conditions of their bail.
- The Applicants have fixed places of abode within the jurisdiction of this Court. \$4.\$
- 5. That it is in the interest of justice that the Applicants are released on bail.
- The Respondents objected to the application in an affidavit in reply sworn by Angumale Simon, the 40 Resident Senior State Attorney in the Office of the Director of Public Prosecutions. The substance of their objection to the application is that the delay in preparation of the committal papers within 180 days was caused by the absence of the police file. The learned Senior State Attorney deposed that he became the Resident Senior State Attorney Arua on the 12/03/2024 and he was served with
- this application only 3 days after he assumed that office. That prior to that, the then Chief State 45 Attorney, Mr. Omia Patrick was responsible for assigning work to all Stet Attorneys including the task of preparation of committal papers. That as a subordinate staff then, he had no means, whatsoever of knowing that the Applicants had not been committed for trial before the High Court

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since this was a duty solely vested upon the Resident Chief State Attorney. That they have since \$ \mathsf{S} received the file from the Regional office of the DPP with guidance from the Regional Officer to have the accused persons committed for trial before the High Court. They also deposed that the amended charge and the committal papers are ready and prayed that the court orders that the Applicants be produced before the Magistrate's Court for Committal Proceedings.

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The Respondents filed written submissions on 16th May, 2024. When the Application came up for hearing on 13/6/24, the Applicant was represented by Abiyo Ivan while the Respondent was represented by Brian Kisomose from the Office of the Director of Public Prosecutions.

- The Applicants did not file Written Submissions while the Respondents, though belated, filed their 15 submissions on 16/5/24\$. I have taken into consideration the submissions on record in arriving at the ruling.
- . At the hearing of the application, counsel for the Applicant presented six(6) sureties and they 20 included the following:
 - 1. Andabati Benon, aged 47 years, a cousin of the 1st Applicant, resident of Ajonoyivu village, Eruba Parish, Vurra Subcounty, Arua District, Tel. No. 0784022199. He tendered on record a letter of introduction and a copy of his national identity card NIN CM7900210E407H.
 - 2. Anguzu Zubairi Juma, 50 years old, resident of Ajonovivu Village, businessman dealing in fish, Tel. No. 0777707111. He also presented a letter from the LC1 Chairperson and his National Identity Card with NIN CM740021027NTE.
 - 3. Aniku Thomas, 50 years old, businessman dealing in produce, resident of Ajonoyivu Village Tel. No. 0773072952. He presented an introduction letter and presented his national identity card with NIN CM740021052AFK.
 - 4. Buatre Christopher, 58 years, peasant farmer Ajonoyivu Village, Tel. No. 0771277715. He also presented an introduction letter with a copy of his national ID NIN CM660021028Q4J.
 - 5. Adiru Molly, 42 years old, resident of Pulwali Village, Onzivu Parish, Oluko Subcounty Arua District. NIN CF800021083V5G Tel. No. 0764366713. She is the mother of the 3rd Applicant.
 - 6. Odama Ozua Hillary, 69 years, Retired Civil Servant. Resident of Polwal Village, Onzivu Parish, Oluko Sub County, Arua City. He is the father of the 3rd Applicant.
- The issue for determination in this Application is "Whether the Applicants have shown sufficient 40 cause to warrant their release on bail."

The right to an individual's personal liberty is protected by Article 23(6) of the Constitution of the Republic of Uganda which states that;

"Where a person is arrested in respect of a criminal offence-

- (a) The person is entitled to apply to the court to be released on bail and the court may grant the person bail on such conditions as the court considers reasonable;

- (b) In the case of an offence which is only triable by the High Court as well as by a subordinate court, if that person has been remanded in custody in respect of the offence for sixty days before trial, that person shall be released on bail on such conditions as the court considers reasonable;
- (c) In the case of an offence triable only by the High Court, if that person has been remanded in custody for one hundred and eighty days before the case is committed to the High Court, that person shall be released on bail on such conditions as the court considers reasonable.

The rationale for these provisions is the presumption of innocence guaranteed in Article 28(3)(a) of the Constitution which provides thus;

"Every person who is charged with a criminal offence shall-

- a) Be presumed to be innocent until proved guilty or until that person has pleaded guilty."

The Constitution(Bail Guidelines for Courts of Judicature)(Practice) Directions, 2022, provides for mandatory bail for offences triable by the High Court in Paragraph 10 as follows;

- (1) Where an offence is triable only by the High Court, if a person has been remanded in custody in respect of that offence for One Hundred and Eighty Days before the case is committed to the High Court, that person shall be released on bail as the court considers reasonable.
- (2)
- (3) For the avoidance of doubt, mandatory release on bail for offences triable by the High Court under Article 23(6) (c) of the Constitution shall be granted only by the High Court.
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The general powers of this court in relation to bail is governed by the Trial on Indictment Act, Cap. 23. Section 14 of the Act grants the court power to release an accused person on bail at any stage of the proceedings, on taking from him a recognizance consisting of a bond, with or without sureties for such amount as is reasonable in the circumstances of the case, to appear before the court at such

a date and at such a time as named in the bond. Section 15 of the Act sets out the conditions under 30 which the court may refuse to grant bail.

It is well settled that a person who is deprived of his liberty by imprisonment before trial or when not serving a sentence is free to apply for bail. However, the discretion to grant or not to grant bail 35 lies with the Court, which has to take all the interest of justice of the parties and society as a whole into account.

The Applicants in this case have been on remand for more than 180 days as stipulated in the Constitution and Paragraph 10 of the Bail Guidelines. Since they have not been committed for trial before the High Court, they qualify for mandatory release on bail on such conditions as the court considers reasonable.

They have presented 6 sureties who are close family members and appear to understand the duties of a surety. They have undertaken to ensure that the Applicants attend court whenever required to 45 do so. All these sureties have presented their details and copies of their introduction letters and national identity cards for the custody of the court to aid in tracing for them in the event that they fail in their duties. I have no doubt that the sureties presented are indeed substantial.

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- Further the Applicants by their affidavits have proved that they have fixed places of abode within the 5 jurisdiction of this court. Unfortunately, they do not attach and document to confirm this. However, I note that the Respondents do not raise this as a concern or as a ground for their objection to the application.
- \$10\$ In light of the above I find that the application has merit, and the application is hereby granted on the following conditions;
- 1. Each of the Applicants shall execute a Cash Bond of Ug. Shs. 1,000,000/=(Uganda Shillings One Million Only).
- 2. Each of the Sureties shall execute a Bond of Ug. Shs. 5,000,000/=(Uganda Shillings Five Million only) Not Cash.
- 3. Each of the Applicants shall report to the Registrar of this Court on the \$1^{st}\$ Thursday of every Month or thereafter as directed by Court.

20 I so order. Ruling delivered this... day of.2024 COLLINS ACELLAM

Judge.

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Prepared on 12 October 2026 · Esheria