

UGANDA / JUDGMENT

Bariburuhe v Uganda (Criminal Miscellaneous Application 2 of 2025)

[2025] UGHC 271 (13 May 2025)

[2025] UGHC 271

COURT
High Court of Uganda

BEFORE
Karoli Lwanga Ssemogerere, J

CASE / FILE NUMBER
Criminal Miscellaneous Application 2 of 2025

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KABALE
CRIMINAL MISC. APPLICATION NO. 002 OF 2025 (ARISING FROM CHIEF
MAGISTRATE'S COURT OF KISORO AT KISORO CR-AA-009 OF 2024)**

(ALSO DPP CASE NO. KIS-CO. 156 OF 2024 AND POLICE CASE NO. KIS-10 CRB-140 OF 2024.

AGABA VALENTINE BARIBURUHE ::::::::::::::::::::::::::::::::::::::

VERSUS

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

BEFORE: HON. JUSTICE KAROLI LWANGA SSEMOGERERE

RULING ON BAIL

Introduction:

- (1) Agaba Valentine Bariburuhe ("Applicant") is the one of accused persons, charged in this court with two capital offences, murder contrary to Sections 171 and 173 of the Penal Code Act, Cap 128 and aggravated robbery contrary to Sections 266 and 267(2) of the Penal Code Act.
- (2) In respect of murder, the accused is charged with the murder of Sunday Callist, and in respect of the aggravated robbery, immediately before or after the said robbery causing the death of the same individua on the 17th day of February 2024. The charge sheet has 7 other co-accused persons.

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Grounds of the Application:

The grounds of the application are contained in a Notice of Motion filed with this Honourable Court on January 31st, 2025. The motion notices the following legal provisions namely a constitutional right to bail; under Articles 23(6)(a) and 28(3)(b) of the Constitution of the Republic of Uganda, Sections 14 and 15 of the Trial on Indictment Act, Cap 25 and Rules 2 and 4 of the Judicature (Criminal Procedure) (Application Rules) S-1 13-8 and Paragraphs 6,7 and 12 of the Judicature (Bail Guidelines for Courts of Judicature) (Practice Directions), 2022.

The grounds relevant to this application are:

- 1. Applicant has a constitutional right to apply for bail;
- 2. Applicant enjoys the presumptions of innocence; as he has neither pleaded nor been proven guilty;
- 3. Applicant is on remand at Kabale Prison, [Ndorwa Government Prison' is the correct name of the prison].
- 4. Applicant has substantial sureties who will ensure his attendance to court at all material times and his compliance with the bail terms set by this court.
- 5. Applicant is facing inhumane conditions in prison as the jail is overcrowded with very many inmates who have spent very many years on remand without trial.
- 6. Applicant is a first-time offender, a law-abiding citizen without a prior criminal record.
- 7. Applicant has a fixed place of abode at Hamutora Cell, Butare, Katojo trading center, Rubanda district within the jurisdiction of this honourable court and will not abscond once released on bail: and
- 8. Applicant will not interfere with prosecution witnesses.

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The same motion also notes in paragraph 3 that applicant has been arraigned and committed to the High Court for trial.

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Representation: S

The application was filed on February 25th, 2025 and argued before this honourable court on April 24th, 2025. Applicant was represented by M/S Mbabali Jude & Co Advocates for the applicant while Ms. Grace Nabaggala Ntege, Chief State Attorney, Regional Office for the Director of Public Prosecutions appeared for the respondent.

Oral Argument:

At the oral argument, parties briefed court on their respective positions. Court directed parties to file written submissions, accordingly, on April 30, 2025 for the applicant and May 7, 2025 for the respondent; and May 9, 15 2025 for submissions in rejoinder. I will note that applications for bail are of necessity a priority for this court for purposes of hearing and disposal. The reasons for the promptness of this court as they touch on fundamental human rights provided for and guaranteed by our Constitution. They must be entertained without any delay. Applicant submissions were received 5 20 days later on May 5, 2025 putting into disarray the busy schedule of this court.

Discussion and Analysis:

- Applicant substantiated his application by a duly sworn affidavit. He 25 deponed to additional grounds, being a student at the Law Development Centre's Bar Course, the post-graduate Diploma in Legal Practice. In paragraph 3 of his affidavit, he states his application for bail was to allow him to go return to the Law Development Centre to complete finish his course which was limited to a period of three years. In Paragraph 5, he 30 stated his uncertainty about the heavy and busy schedule of court, and fear this his trial date may not be soon. In paragraph 6, he stated he had been denied bail before by this court and attached a ruling on a prior bail application Miscellaneous Application No. 0012 of 2024, decided by my brother, Emokor S. J., on June 14th 2024. 35
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Further aversions in his affidavit in paragraphs 8,9, and 10 speak to his circumstances as a having a fixed place of abode, being a family man, married with 5 children, ages between 3 and 16. Lastly, in paragraph 11, he proposed 6 sureties who are all related to him.

In their submissions, applicant's Counsel proposed determination of one ground for determination, which I adopt with minor modification;

Whether the applicant has established sufficient grounds for his release on bail?

This is a second bail application. An applicant is at liberty to apply for bail at any time except during trial. The outcome of the first bail application is of no effect on consideration of the second bail application.

The application has already stated the relevant law governing grant of bail. The right to bail provided for in Article 23(6)(a) of the Constitution provides as follows:

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"Where a person is arrested in respect of a criminal offence, he or she is entitled to apply to court to be released on bail, and court may grant that person bail on such conditions as the court considers reasonable."

The right to bail is also predicated on the constitutional presumption of innocence provided for in Article 28(3)(a) of the Constitution which provides as follows: 25

> "Every person who is charged with a criminal offence shall be presumed to be innocent until proven guilty or until that person has pleaded guilty."

The presumption of innocence is one of the bedrocks of our criminal justice system, and is also based on Article 11(1) of the Universal Declaration of Human Rights and Article 14(2) of the International Covenant on Civil and **Political Rights**. Uganda is a party to these two international conventions. This is the position of the law in Uganda, see **Omiat Patrick v Uganda**, Criminal Miscellaneous Application No. 071 of 2024, decided by Wamala B., J in the High Court of Uganda at Soroti on April 14, 2025.

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The framers of the Constitution were fervently protective of enshrining this $\overline{\$5\%}$ practice due to Uganda's turbulent political past. At the time of coming into force of the Constitution, a person could be detained at the pleasure of the Minister of Internal Affairs under the Public Order and Security Act, No. 11 of 1967, and a review of his or her situation in the hands of periodic reviews without a constitutional right to apply for bail. 10

There are additional protections to fortify this right under Article 23(6)(c) of the Constitution, cited by Counsel for the applicant namely:

"In the case of an offence triable only by the High Court, if that person has been remanded in custody for one hundred eighty days before being committed to the High Court, that person shall be released on bail on such conditions as the court considers reasonable."

brief, the two provisions, Article $\$23(6)(a)\%$ and $\$23(6)(c)\%$ are In complementary. The former establishes the right to bail, while the latter speaks to mandatory bail.

- At the oral argument before this court, this distinction came up in 20 submissions by both Counsel. Counsel for the applicant stated the applicant had clocked the 180 days establishing his eligibility for mandatory bail. Counsel for the respondent stated that the clock had stopped with the committal of the applicant to trial before this Honourable Court.

- Before proceeding any further, I wish to resolve this apparent contradiction \$25\$ in the two positions. First, these raise a point of law; whether this was a case for discretionary bail under Article 23(6)(a) or mandatory bail under Article \$23(6)(c)\$. The grounds of the application in the notice of motion summarized in my ruling speak to discretionary bail rather than mandatory bail. No specific facts were pleaded on the entitlement to mandatory bail. A 30 review of the committal papers shows the applicant was charged on March 27th, 2024 and committed to trial in the High Court on November 11th, 2024. At the time of committal, he had clocked more than 180 days on remand.
- In any event, no party contests the fact that the accused has been committed 35 to trial in the High Court. Neither the application nor the affidavit in support state anywhere that this is a case for mandatory bail. Court would

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have been greatly helped if the application comprised of the notice of \$\mathsf{S}\$ motion and the affidavit in support produced a computation of time to arrive at the basis for the entitlement of mandatory bail. I find this a little more than dilatory conduct on the part of Counsel for the applicant, who faced with a possible choice of mandatory bail ignored laying sufficient basis for consideration of this ground. Paragraph 4 of the notice of motion is 10 unsupported by any evidence in the applicant's affidavit. This is inexcusable.

I also make a specific finding that absent evidence in support thereof, I find that the accused has been committed to trial, and in material aspects, any basis for this argument has been overtaken by events.

The residual issues governing bail that are left are the constitutional 15 presumption of innocence balanced with the discretionary right to bail under Articles 23(6)(a) and 28(3) of the Constitution. These are supported by the considerations in exercise of court's discretion in respect of any of the offences in Section 16(2) of the Trial on Indictments Act, Cap 25 (hereinafter referred to as the "TIA"). Section 16(1) states the grounds for denial of bail. 20 The relevant provision states:

> "..... court may refuse to grant bail to a person accused of an offence specified in sub-section (2) if he or she does not prove, to the satisfaction of court that:

- (a) Exceptional circumstances exist justifying his or her release on bail: and
- (b) That he or she will not abscond when released on bail."

Section 16(2) (a) provides the relevant offences with which the applicant is charged and committed to the High Court for. They are murder and aggravated robbery both of which are only triable by the High Court. In short, once a person is charged with any such offence defined in Section 16(2) then the conditions in Section 16(1) of the TIA <u>automatically</u> apply. [Emphasis mine].

Section 16(3) of the TIA lists exceptional circumstances as any of the following [Emphasis added].

- (a) Grave illness certified by a medical officer of the prison ... where the accused person is detained as incapable of adequate medical treatment while the accused is in custody:
- (b) A certificate of no objection by the Director of Public Prosecutions; or
- (c) The infancy or advanced age of the accused.

In short, the position of the law is that these requirements of the statutory law of Uganda must be complied with. In the offences of murder and aggravated robbery that the accused person is charged with the provisions of Section 16(1), (2) and (3) of the TIA are couched in mandatory terms. These are that exceptional circumstances required by Section 16(1) must exist justifying the grant of bail; and at least one of the three circumstances in Section 16(3) must be specifically pleaded in the application for the bail. The judiciousness in the exercise of discretion of court to grant bail, which is the law of the land enunciated in the Supreme Court's decision in *Nakiwugge Rachel Muleke v Uganda Criminal Reference No. 12 of 2020* must be met.

Once any of these conditions' precedent is not met, the application for bail must fail as a matter of law [Emphasis mine]. A judicial officer must have very good grounds to grant bail which are apparent on the face of the record. The authorities on discretionary grant of bail in Uganda, and they are many provide the courts with wide latitude on what to consider in their evaluation of the factors under Section 16(3) of the TIA especially provisions (c) dealing with the age of the accused. Here in the instant case, the applicant does not qualify. He is only about 40 years old. See the ruling of Gadenya P., J. in **Onebe Francis v Uganda Miscellaneous Application No.* 222 of 2021*.

Lastly, the Constitution (Bail Guidelines for Courts of Judicature) (Practice **Directions**), 2022, paragraph 13 cited by my brother Emokor J., in denying the applicant's earlier bail application guide court to consider the following factors in the grant of bail. These are:

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- a) Gravity of the offence
- b) *Nature of the offence*

- c) *Possibility of a substantial delay in trial*
- d) Likelihood that the applicant may commit an offence on bail.

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- e) Likelihood of the applicant interfering with witnesses
- f) Safety of the applicant, the community and the complainants

The guidelines are broader, but they remain guidelines. As I mentioned at the hearing, the complainants or victims in the legal system we have today don't have independent legal representation to argue their interests. That responsibility falls on court.

Comment:

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Applicant's affidavit in paragraph 5 and 6 of the notice of motion are correct in stating that Ndorwa Government Prison is overcrowded. Court is aware of this situation and on April 14, 2025, visited the two prisons, 15 Ndorwa Government Prison and Ndorwa Women's Prison to familiarize itself with the plight of the inmates. For these reasons, Court has allocated as a matter of priority two business days, Monday and Friday to hear and expeditiously determine bail applications as an administrative measure. In addition, a number of criminal sessions are envisaged in the foreseeable 20 future to handle the more than 300 persons committed for trial in the High Court. That said, court's is bound to administer and apply the law as it exists on the statute books. This addresses the issue of substantial delay of the trial. Lastly, the Constitution (Bail Guidelines for Courts of Judicature) (Practice Directions), 2022, paragraph 13 cited by my brother Emokor J., in denying 25 the earlier bail application guide court to consider the following factors in the grant of bail. These are:

- a) *Gravity of the offence*
- b) *Nature of the offence*
- c) *Possibility of a substantial delay in trial*
- d) Likelihood that the applicant may commit an offence on bail.
- e) Likelihood of the applicant interfering with witnesses
- f) Safety of the applicant, the community and the complainants

The guidelines supplement the clear intention of the legislature. The nature of the offences is grave, both murder and aggravated are capital in nature. I 35 have already stated the applicant has been committed for trial. The earlier bail application had unrebutted derogatory information about the applicant,

and the fact that he has not been convicted was rebutted by his description 5 as a serial offender by law enforcement. Lastly, the presence or absence of the complainants at the bail hearing was mentioned by court as factor in arriving at a decision in the bail application.

Findings and Conclusion: 10

Applicant has not met the requirements for favorable exercise of the court's discretion to grant bail. Neither has the applicant met the statutory muster for mandatory bail.

This application is dismissed. Applicant should await placement of his case on session for hearing and disposal.

I SO ORDER,

DATED AT KABALE THIS

Hassemagnere

Ssemogerere, Karoli Lwanga

Judge.

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