

UGANDA / JUDGMENT

Butsiba v Uganda (Criminal Miscellaneous Application 78 of 2024) [2025] UGHCCRD 9 (17 February 2025) [2025] UGHCCRD 9

COURT

HC: Criminal Division (Uganda)

BEFORE

Gadenya, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 78 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CRIMINAL DIVISION)

CRIMINAL MISC. APPN NO. 78 OF 2024

(ARISING FROM THE CHIEF MAGISTRATES COURT OF NAKAWA CRIMINAL CASE NO. CA. 27 OF 2023)

BUTSIBA STEVEN APPLICANT

VERSUS

UGANDA..... RESPONDENT

RULING

BEFORE JUSTICE GADENYA PAUL WOLIMBWA

1. Introduction

This application for Bail Pending Trial was brought under Articles 23 (6) of the Constitution; Section 14 of the Trial on Indictment Act Cap 23; and, Rule 2 of the Judicature (Criminal Procedure) (Applications) Rules S. I. 13. The grounds of the Application as contained in the Notice of Motion and its Supporting Affidavit are that:

1. It is the Applicant's constitutional right to apply for bail.
2. The Applicant has been on remand for over Two Hundred and Ten (210) days.

3. The Applicant is presumed innocent until proved guilty or until he pleads guilty.
4. The Applicant has a fixed place of abode within the jurisdiction of this Honorable Court.
5. The Applicant is a sole bread winner for his family.
6. The offence the Applicant is charged with is bailable by this Court.
7. The Applicant has not absconded bail before, and does not intend to do so if released.
8. The Applicant has substantial sureties who are each ready and willing to execute a bond to ensure that he complies with the bail terms, including attending Court as and when required to do so.
9. It is in the interest of justice that the Application is allowed

The respondent on the other hand, opposed the application on grounds that the applicant is likely to abscond and when he does, it will be difficult to trace him for trial.

1. Representation

The applicant was represented by the firm of M/s Ssemengo & Co. Advocates whereas the complainant was represented by Ms. Apollot Christine, a Senior State Attorney from the Office of the Director of Public Prosecutions.

1. Issue for Determination

Whether the applicant will abscond when granted bail?

1. Determination of the Application

4.0.1. The Law on Bail

1. Discretion

The essence of bail is merely to release the accused person from physical custody but he/she is still under the jurisdiction of the law and is bound to appear at the appointed time and place. The discretionary power of the court to grant bail is provided for under Article 23 (6) (a) of the Constitution, section 14 (1) of the Trial on Indictment Act Cap. 23, and; Article 28 (3) (a) of the Constitution. For ease of reference these laws are reproduced below:

Article 23 (6) (a) of the Constitution provides 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 that person bail on such conditions as the court considers reasonable.”

Section 14 (1) of the Trial on Indictment Act Cap. 23 provides that:

“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 recognizance 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.”

Article 28 (3) (a) of the Constitution provides that:

“(1) Every person who is charged with a criminal offence shall—

1. *be presumed to be innocent until proved guilty or until that person has pleaded guilty;”*

These provisions are intended to safeguard both the right to personal liberty of an accused person which should not be taken lightly and/or arbitrarily deprived and the right to a secure environment by the community.

1. **Conditions for Release on Bail**

The conditions under which Court can grant bail are spelt out in Section 15 of the Trial on Indictment Act Cap. 23, which include proof of exceptional circumstances and guarantees that the accused will not abscond. According to Section 15 (3) of the Trial on Indictment Act Cap. 23, exceptional circumstances include grave illness; presentation of a Certificate of no objection from the Director of Public Prosecutions; and infancy or advanced age.

Firstly, it should however be noted that proof of exceptional circumstances is not mandatory in view of article 23(6) of the Constitution which gives court discretion to either grant or deny bail. Secondly, proof of exceptional circumstances is not a blank cheque that the accused will be released on bail. Bail can be denied if there are circumstances that show that the accused person might abscond or that it is not in the interest of justice to release the accused person on bail.

Additionally, Article 23 (6) (c) empowers court to release an accused person charged with an offence only triable by the High Court if that person has not been committed for trial in the High Court and has been on remand for more than 180 days. Under this Article, the courts duty is limited to imposing bail conditions on the applicant which it considers reasonable. However, in exercise of judicial discretion, mandatory bail can be denied if there are circumstances that show that the accused person might abscond or that it is not in the interest of justice to release the accused person on bail.

6.0.2. The Application

Perusal of the file reveals that the Applicant was charged with the offense of Aggravated Defilement contrary to section 129 (3) (4) (a) of the Penal Code Act Cap. 120 and was first remanded on 18th August, 2023. He has since been on remand, awaiting committal to the High Court for trial. This means that the applicant has been on remand for approximately One Year, 5 months and a few days, without being committed to the High Court for trial. He therefore qualifies for mandatory bail under Article 23 (6) (c). Now what is left for court to determine are the conditions to be met by the applicant before he is released. In determining suitable conditions to be set for the release of the applicant on bail, court shall only deal with the question

of whether the applicant will abscond when granted bail.

Issue: Whether the Applicant will abscond if granted Bail?

The applicant argued that he will not abscond if released on bail because he has a fixed place of abode known to court and sureties who are prepared to secure and guarantee his return to court when required.

In considering whether an applicant will abscond if granted bail, Section 15 (4) of the Trial on Indictment Act Cap. 23 enjoins court to consider the following factors:

“(a) Whether the accused has a fixed abode within the jurisdiction of the court or is ordinarily resident outside Uganda;

(b) Whether the accused has sound securities within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail;

(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.”

This is further emphasized by Guideline 13 (1) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022, which provides an extensive list of factors court should take into considering when handling a bail application. Guideline 13 (1) of the said Guidelines provide as follows:

*“A court shall consider the following in handling a bail application.**

1. *Gravity of the offence;*
2. *Nature of the offence;*
3. *The antecedents of the applicant so far as they are known;*
4. *The possibility of a substantial delay of the trial;*
5. *The applicants age, physical and mental condition;*
6. *The likelihood of the applicant to attend court*
7. *The stage of the proceedings;*
8. *The likelihood of the applicant to commit an offence while on bail;*
9. *The likelihood of the applicant interfering with witnesses*
10. *The safety of the applicant, the community, and the complainants;*
11. *Whether the applicant has a fixed place of abode...;*
12. *Whether the applicant has sufficient sureties...;*

13. *Whether the applicant has on a previous occasion when released on bail, failed to comply with his/her bail terms.*
14. *Whether there are any other charges against the applicant; or*
15. *Whether the offence for which the applicant is charged involved violence.”*

The effect of the above cited provisions is that for one to be granted bail pending trial on grounds that they shall not abscond, court shall determine whether the applicant has a fixed place of a bode (to ensure the applicant is traceable) and the sureties presented, are substantial (to ensure they are: traceable, able to preside over the applicant, and can pay the bail bond if the applicant absconds).

1. Fixed Place of Abode

Court in **Mugenyi Steven Vs Uganda, Miscellaneous application No.6 of 2004**, held that: *the onus is on the applicant to satisfy that he has a permanent place of abode in a particular known village, sub-county county, and* district, *to enable court exercise jurisdiction over the applicant while on bail being able to trace his whereabouts whenever it is necessary.*

In the instant case, the applicant deponed that he has a fixed place of abode at Mutungo Zone 11, Mutungo Parish, Nakawa Division, Kampala City. As part of his Application, the Applicant submitted a copy of his National Identity Card and a Letter of Recommendation from his area LC. 1 Chairperson. The Recommendation Letter shows the applicants’ village, Parish and City. With a well-known address in terms of village, Parish and District, the applicant’s whereabouts can be traced. For this reason, I am satisfied that the applicant has a fixed place of abode within the jurisdiction of the court.

1. Substantial Sureties

Guideline 15 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 provides that:

“(1). When considering the suitability of a surety, court shall take into account the following factors-

1. *The age of the surety;*
2. *Work and residence address of the surety;*
3. *Character and antecedents of the surety;*
4. *Relationship to the accused person; and*
5. *Any other factor as the court may deem fit.*

“(2) Subject to sub paragraph (1), the proposed surety shall provide documentary proof including;

1. *a copy of his/her national identity card, passport or aliens identification;*
2. *an introductory letter from the local council chairperson of the area where the surety is ordinarily resident;*
3. *Asylum seeker or refugee registration documents issued by the Office of the Prime Minister.”*

The above cited Guideline helps court is assessing the suitability of sureties presented by an applicant.

On record, the applicant deposes that he has substantial sureties who are ready to stand as guarantees for him. At paragraph 14 of his Affidavit in support, the Applicant presented Four sureties as follows:

1. **Mr. Wabuteya John** – Father
2. **Mrs. Mutenyo Agasa** – Mother
3. **Mr. Wabendo Francis Kutosi** – Uncle
4. **Mr. Wasiye David Mbanjo** – Longtime friend and area LC. 1 Chairperson

Each of these sureties presented letters of introduction from their respective L. C.1 chairpersons and a copy of their National Identity Cards. Additionally, the applicant in his application describes his relationship to each surety. As noted from the record, three of the proposed sureties are described as family members i.e. Father, Mother, and Uncle. While the fourth surety is described as a longtime friend and the area LC.1 Chairperson. The described relation creates a strong personal connection between the Applicant and the stated sureties. And in my opinion, this bond makes it unlikely that the Applicant would willingly breach the terms and conditions of the bail, as doing so, would jeopardize the sureties.

Furthermore, the ages of the presented sureties as deduced from their identification documents reveals that they are considerably older than the applicant, with the youngest being at least 22 years senior and the oldest being 40 years senior to the applicant. This provides reassurance that they may have an advantage over the applicant when it comes to appearing in court.

To further strengthen their candidacy as sureties, the Applicant in his submissions provided adequate information regarding their social-economic standing in society. This makes it easier for court to effectively assess their ability to fulfill the bail bond obligations should the applicant flee. For these reasons therefore, all the four sureties are recognized as substantial and approved.

In light of the foregoing, the applicant has given sufficient evidence to guarantee that he will not abscond when granted bail.

1. **Decision**

By presenting substantial sureties and demonstrating that he has a fixed place of abode, the Applicant has given sufficient guarantees that he will not abscond when granted bail. This Application is allowed. The Applicant is granted Bail Pending Trial on the following terms:

1. The Applicant will deposit in court a sum of UGX. 5,000,000/=.
2. The Approved Sureties are: Wabuteya John, Mutenyo Agasa, Wabendo Francis Kutosi, and Wasiye David Mbanjo.
3. Each of the Applicants' Approved sureties shall execute a none-cash bond of UGX. 10,000,000/=.
4. The Applicant is directed to Appear before the Deputy Registrar of the High Court Criminal Division once every month with effect from 15th March, 2025.

It is so ordered.

Gadenya Paul Wolimbwa

JUDGE

17th February 2025

Ms. Apolot, SSA for the Respondent

Applicant- Absent

Mr. Kagwa – Court Clerk

Principal Officer 110 Omodo

Ruling read.

Gadenya Paul Wolimbwa

JUDGE

17th February 2025

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