

UGANDA / JUDGMENT

Chemutai v Uganda (Criminal Miscellaneous Application 89 of 2023) [2024] UGHC 602 (28 June 2024)

[2024] UGHC 602

COURT

High Court of Uganda

BEFORE

Apiny, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 89 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE

CRIMINAL MISC. APPLICATION NO. 089 OF 2023

(ARISING FROM CRIMINAL CASE NO. KAP 00040/2022)

CHEMUTAI SHARIF ALIAS WUUD GARANG ::::::::::::::::::::::::::::::::::

VERSUS

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BEFORE: HON. JUSTICE MARGARET APINY

RULING

Introduction 10

> The applicant brought this application under Article 23 (6) (a) of the Constitution, Sections 14 and 15 of the Trial on Indictment Act, Rule 2 & 4 of the Judicature (Criminal Procedure) (Application) Rules S. I 13-8), for orders that: -

- a) The applicant be released on bail pending the disposal of the Criminal Case preferred against him.

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b) Costs of this application to be provided for.

The application is premised on the grounds contained in the application and in the affidavit in support of the application deposed by Chemutai Sharif, the applicant herein, which briefly are that:

- 1. Sometime around December 2022, the applicant surrendered himself to Bukwo CPS having been summoned on allegations of rape and murder of one Cherotich Peace.
- 2. The applicant together with two others were charged with the offences of Rape and Murder before the Chief Magistrates Court of Kapchorwa at Kapchorwa in December 2022 and remanded in prison.
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- 3. The applicant together with his co-accused were committed to the High Court on the 15th August 2023 but the trial may not commence soon due to the backlog of cases awaiting trial.

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- 4. The applicant is the sole breadwinner of his family with infant children and his dependent mother who is elderly and unemployed without a source of livelihood.
- 5. The applicant has been advised by his lawyers, M/s Reeve Advocates that this court has the discretion to grant him bail and safeguard his constitutional right to be presumed innocent until proven guilty upon satisfying reasonable conditions of inter alia fixed place of abode, compliance with bail conditions, not abscond and noninterferences with witnesses.
- 6. The applicant has a fixed place of abode in Chelabei Cell, Tongwo Ward, West Division, in Kapchorwa district where he was residing before his arrest which is within the jurisdiction of this court.
- 7. The applicant has sureties who are substantial and are willing to undertake to ensure that he complies with the bail conditions.
- 8. The applicant has never been charged with any criminal offence prior to this charge and there are no pending charges against him.
- 9. It is fair and just that this court intervenes and makes orders for his release on bail pending of the criminal case against him.

The respondent opposed the application through an affidavit in reply that was deposed by Mr. Obbo Patrick, a State Attorney c/o Office of the Director Public Prosecutions, Mbale in which he averred that the applicant is charged with serious offences of Rape c/s 123 and 124 of the Penal Code Act and Murder c/s 188 and 189 of the Penal Code Act punishable by death upon conviction and there is a likelihood of absconding if released on bail which will render the trial nugatory.

He contended that since the applicant was committed to the high court for trial on 15th August 2023 and is aware of the evidence against him, there is a strong possibility that he might abscond and render the trial impossible if granted bail. He further averred that the applicant has not satisfactorily proved in his application that he has a fixed place of abode by way of

attaching a land title, proof of payment of utility bills or any other documents. 55

Counsel averred that the applicant does not have substantial sureties since the attached documents are not by themselves proof of substantiality. That it is in the interest of justice that the application be dismissed and the case fixed for hearing.

The applicant did not file an affidavit in rejoinder

Representation. 60

At the hearing, Mr. Gordon Kifudde appeared for the applicant while Ms. Maria Nakatudde appeared for the respondent, both parties addressed court through oral submissions, which I have considered. I have also noted that counsel for the applicant had irregularly filed a written submission with the application. The same has not been considered in this ruling.

Submissions 65

In his submission, counsel for the applicant reproduced the grounds of the application as contained in the application and affidavit in support of the application.

Fixed place of abode

He submitted that the applicant should be granted bail because he has a fixed place of abode

in Chelabei Cell, Tongwo Ward, West division, Kapchorwa Municipality, Kapchorwa district 70 which is within the jurisdiction of this court. A copy of the original introductory letter from the area LC1 chairperson marked "B" was presented in support and a copy of the applicant's National ID, NIN: CM04014103R86D unmarked but attached to annexure B.

Sureties

- Counsel submitted that the applicant has substantial sureties to guarantee his presence as 75 and when required by court to do so. He presented 3 sureties to wit: -

- 1. KIPJONG JULIUS, aged 51, a resident of Chelabei Cell, Tongwo Ward, West division, Kapchorwa district, a teacher at Kaptur Primary School who holds a National ID NIN: CM72014100H26K, is a paternal uncle to the accused. He presented the original copy of the National ID and the teacher Staff ID issued by Kapchorwa Municipal Council all of the said documents are marked "C1". He also provided telephone contacts

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- 2. SIWA UMAR, aged 63 years old, a resident of Chelabei Cell, Tongwo Ward, West division, Kapchorwa Municipality, Kapchorwa district, a businessman dealing in timber with Kapchorwa Municipality and runs a workshop at Kapteret. He is the biological father to the applicant, holding a National ID NIN: CM610141021E4F which was verified by this court. Copies of the said documents are attached to the application and marked "C2". He also furnished court with telephone contacts: 0782891710 / 0702623976
- 3. MUSAU BASHIR KARYEBE, aged 54 years, a resident of Chelabei Cell, Tongwo Ward, West division, Kapchorwa district, a businessman dealing in livestock farming with butchery stalls within the municipality. He is a paternal uncle of the applicant. He presented an original copy of National ID NIN: CM69014100F2J. He also provided a Telephone contact: 039988309.
- Counsel prayed that court finds the sureties substantial and exercises its discretion to grant bail to the accused person.

For the respondent, Ms. Nakatudde, a learned State Attorney in her submission relied on the affidavit in reply deposed by Patrick Obbo, a State Attorney in the office of the Director of Public Prosecution, Mbale contended that the applicant does not qualify to be granted bail. She contended that the applicant has not proved to the satisfaction of court that he has a fixed place of abode within the jurisdiction of this court since the introductory letter by the LC1 is not sufficient evidence to demonstrate the same. According to counsel, the applicant ought to have attached a certificate of title, tenancy agreement among others to demonstrate that he has a fixed place of abode within the jurisdiction of this court. She relied on Crim. Misc. Application No. 11 of 2023, Sher Singh Shekhawat vs Uganda in support of her assertion.

She argued that whereas the applicant contends that he is a breadwinner taking care of his

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family and mother who is elderly, no evidence was adduced to demonstrate that the applicant had any employment and a source of income before his detention.

Regarding sureties, the learned State Attorney submitted that the substantiality of the sureties is in doubt since the introductory letters do not state whether the sureties have fixed places of abode within the jurisdiction of court and that sureties have equally not attached any asset to show their capacity to meet the bond terms.

It was submitted for the respondent that the applicant is indicted with serious offences of Murder and Rape both of which attract maximum sentence and is likely to abscond when granted bail. She prayed that the application be dismissed.

In rejoinder, counsel for the applicant reiterated his earlier submission that the applicant has a fixed place of abode within the jurisdiction of this court since no law requires that a land title or tenancy agreement must be adduced as evidence.

- On substantiality of sureties, counsel contended that the Constitution (Bail guideline) (Courts of Judicature) Practice directions, 2022 provide for considerations in establishing substantiality of a surety such as the age of the surety, occupation and residence and relationship of the surety to the applicant. In his view, given the age of the sureties, they passed the test since none of them is of advanced age or infancy. The sureties have provided their works, their residences and their relationship with the applicant.
- Regarding the nature of the offence, counsel submitted that the applicant still enjoys a 125 presumption of innocence and undertakes not to abscond when granted bail. He prayed that the applicant be granted bail.

Determination of Court

It is a presumption of the law that an accused person is presumed to be innocent until proven guilty by a competent court and or until such an accused pleads guilty to the charge 130

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voluntarily. This presumption is enshrined in Article 28 (3) (a) of the Constitution. Further it is also settled law that an accused person has a right to apply for bail pending his or her trial as provided under Article 23 (6) (a) of the Constitution. (See Kanyongo Bashir Vs Uganda HCMA No.158 of 2019).

- Section 14 of the Trial on Indictment Act confers discretionary power upon this court to either 135 grant or not grant bail, which discretion must be exercised judiciously. It is also settled law that in a bail application, the court should lean in favour and not against the liberty of an accused person as long as the interest of justice is not prejudiced. (See Yassin Bashir Vs Uganda HMCA No. 4 of 2016).

- In the instant case, the applicant led evidence to demonstrate that he will return to court when 140 granted bail. Counsel for the applicant submitted that the applicant has a fixed place of abode in Chelabei Cell, Tongwo Ward, West division, Kapchorwa district. He attached a copy of a national ID that was presented to support the position and a copy of an introductory letter from his area local council representative.
- This court holds the view that the introductory letter from the area LC1 is sufficient proof of 145 place of abode since the local authority which represents the government at the grassroots interacts with the citizens quite frequently placing them in a position to know the residents of their villages. I find the submission by the respondent that the applicant ought to have attached a Certificate of Title or tenancy agreement to be unrealistic and intended to occasion a miscarriage of justice for individuals who hold land under customary tenure which may not 150 be documented in the manner suggested by the learned State attorney. I am therefore of the view that the applicant has a fixed place of abode within the jurisdiction of this court.

Regarding the substantiality of the sureties, counsel for the applicant submitted that the applicant shall not abscond when granted bail as demonstrated by the presentation of three sureties by the names of Kipjong Julius, Siwa Umar, Musau Bashir Karyebe.

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I have reviewed the biography of the sureties and established that all the sureties enjoy a close relationship with the applicant with the 1st being a paternal Uncle, 2nd a biological father and the 3rd a paternal uncle to the applicant. All the sureties are mature in age with the 1st surety being 51 years, the 2nd 63 years and the 3rd being 54 years of age as weighed against that of the applicant who is 20 years old as established from the National ID he attached to the application. This in my view puts the sureties in a position to be able to compel the applicant as and when required to attend court.

In the instant case, all the sureties have demonstrated that they have known occupations with the 1st surety being a teacher at Kaptur Primary school while the 2nd and 3rd sureties are businessmen dealing in timber and livestock respectively, which earns them a position of influence in society but also guarantees that they have a source of income to ensure that they can comply with the bond terms.

I note further that the sureties have presented credible documents of identification such as the staff identity card, national identity cards and introductory letters from their respective LC1 chairpersons which all demonstrate that they are from Chelabei Cell, Tongwo Ward, West

170 division, Kapchorwa district where the applicant himself has a fixed place of abode. I therefore hold the view that the three sureties are substantial enough to ensure that the applicant returns for trial when granted bail.

Regarding the nature of the offences, the offences with which the applicant is charged are

grave in nature and attract maximum sentences and may constitute a reason for denial of 175 bail as held in the case of Kizza Besigye Vs Uganda Constitutional reference No. 20 of 2008, I have I have considered that the fact that the applicant is indicted of the offences of Rape c/s 123 and 124 of the Penal Code Act and Murder c/s 188 and 189 of the Penal Code Act punishable by death upon conviction. I have also considered that manner the alleged offence was committed as established from the summary of evidence whereby it is alleged that the 180 body of the deceased(victim of the offence) was found at Tabagon Resort Cliff and upon examination of the body it was established that the body had bruises, lacerations, cut wounds

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and multiple fracture of the tibia and fibular bone with vaginal discharge all these are still fresh in the minds of the relatives of the victim of the offence which undermines the safety of the applicant himself in the community when granted bail given that the offence is alleged to 185 have been committed as recently as December 2022. In the case of Obita Charles vs Uganda HCMA No. 68 of 2023 it was held that the Constitution (Bail Guideline for courts of Judicature) (Practice) Directions, 2022, guidelines 4 (b & J) demands that the nature of the offense and the safety of the applicant, the community and the complainants respectively be taken into consideration in an application for bail. 190

In conclusion therefore even if the applicant has proved to the satisfaction of court that he has a fixed place of abode within the jurisdiction of this court as well as having substantial surety, I have also strongly considered the risk of the likelihood of the applicant not returning for trial when granted bail since the offences are grave in nature and attract maximum sentences.

I have further taken into consideration the fact that the applicant's life is bound to be in danger should this court grant bail in this matter.

I therefore decline to grant bail in this matter and dismiss the application accordingly.

I so order. 200

Dated at Mbale this 28th day of June 2024.

Margaret Apiny JUDGE

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