

UGANDA / JUDGMENT

Ediau and Another v Uganda (Criminal Miscellaneous Application 4 of 2024)

[2024] UGHC 558 (28 June 2024)

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COURT

High Court of Uganda

BEFORE

Adonyo, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 4 of 2024

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The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Miscellaneous Application No. 04 of 2024

(Arising from Criminal Case No. AA 598 of 2022)

(Arising from Soroti CRB No. 243 of 2022)

<pre>.....

- 1. Ediau Joel (A2)
- 2. Okiroror Gabriel (A5

Versus

Uganda ::::::::::::::::::::

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

1. Background:

The applicants were charged with two counts: the first count was aggravated robbery contrary to Sections 285 and 286 of the Penal Code Act (PCA), and the 20 second count was attempted murder contrary to Section 204 of the Penal Code Act, Cap. 120.

2. Legal basis of the Application:

The application is by a Notice of Motion under ``s 20(2), 23(6)(a) and 28(1)(3)(a) of the Constitution of the Republic of Uganda, 1995, (the Constitution), and Sections 25

14 and 15 of the Trial on Indictments Act, Cap 23 (TIA), for orders that the applicants $\{S\}$ now on remand at Soroti Government prison be released on bail pending the hearing of their case upon such conditions as this Honourable Court shall deem fit.

3. Grounds:

The applicants deponed affidavits containing the grounds upon which the application was anchored. Some of these grounds are; 10

- a) The applicants have the constitutional right to apply for bail, and the court has the discretion to consider granting bail.
- b) The applicants were arrested in October 2022 and charged with the offences of aggravated robbery and attempted murder, and on 16th March 2023, they were committed for trial in this court and have been on remand since.
- c) The applicants are presumed innocent until proven guilty or until they plead guilty to the charges.
- d) The applicants have been on remand at Soroti Government Prison for over nine months, and they have reached the mandatory 180-day remand period, which entitles them to apply for and be released on bail.
- e) The applicants have permanent and fixed places of abode at Ogorai village, Odudui parish, Arapai subcounty, Soroti district within the jurisdiction of the court.
- f) Each applicant has three proposed sureties who are close relatives and understand their obligations towards this Court.
- g) The applicants will not interfere with the state witnesses or any evidence to be tendered to support the charges.
- h) The offences with which the applicants are charged are bailable.
- i) There are no other pending criminal charges against the applicants, nor do the applicants have any known previous criminal record.
- i) The applicants will not abscond when released on bail, and it would be fair and just for the applicants to be granted bail pending their subsequent trial.
- k) The applicant is a law-abiding citizen, ready and willing to abide by the bail conditions set by the Court.
- l) The applicant will attend his trial as and when the Court commands him to.

- 4. Affidavit in reply: 15

The deputy registrar of this court, on 11th March 2024, ordered the respondent to file their affidavit in reply to the application and the written submissions by 21st March 2024, which they did not do. There is also a filed affidavit of service deposed by Okello Edward on 11th March 2024, evidencing the service of the instant application onto the respondents. This instant application is unopposed because the respondent did not file their affidavit in reply.

5. Submissions:

Through Counsel Locoto Kevin, the applicants filed written submissions arguing this application, which the court has considered together with the application, affidavits, attached documents, relevant legal authorities, and applicable laws while

6. Decision:

determining it.

The presumption of innocence is the primary principle for which a court may, in the $\$ \backslash \mathrm{mathsf{S}} \$$ exercise of its discretion, release an accused person on bail pending trial as Article 28(3)(a) of the Constitution of the Republic of Uganda, 1995) provides that.

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

Article 23(6)(a) of the Constitution of the Republic of Uganda provides that: 10

Where a person is arrested in respect of a Criminal Offence, he 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.

In their affidavits, the applicants conceded that it was at the Honourable Court's discretion to release them on bail pending trial. They also alluded to their right to 15 apply for bail. Because it is their constitutional right to apply for bail, the applicants' averments are aligned with Article 23(6)(a) of the Constitution.

Capital offences in this regard, attempted murder and aggravated robbery, are bailable; however, whether the court is inclined to exercise the discretion to grant

or not is a matter dependent on the circumstances of each case and the evidence 20 adduced guaranteeing the applicant's return to the court to attend the trial.

Section 14(1) of the Trial on Indictments Act, Cap 23 stipulates the stance outlined in Article 23(6) (a) of the Constitution. It underpins this Court's discretion to release an accused person, at any stage of the proceedings, on taking from him or her a recognisance 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.

- The Constitution (Bail Guidelines for Courts of Judicature) Practice Directions, 2022, \$5\$ under paragraph 5, provides the general principles in consideration of a bail application thus:
- a) The right of an applicant to be presumed innocent as provided for in article 28(3) of the Constitution;
- b) The applicant's right to liberty as provided for in Article 23 of the Constitution;
- c) The applicant's obligation to attend the trial;
- d) The discretion of the court to grant bail on such terms and conditions as the court considers reasonable; and
- e) The need to balance the rights of the applicant and the interest of justice.
- Having exhausted the legal provisions regarding bail, I will now turn to the merits of 15 this application.

Under Section 15(1) of the Trial on Indictments Act, the Court may refuse to grant bail to persons charged with offences such as aggravated robbery and attempted murder unless such applicants prove, to the satisfaction of the court, that they will

not abscond when released on bail and that exceptional circumstances exist 20 justifying his or her release.

The applicants, in their respective affidavits in support of the application, did not plead and prove exceptional circumstances and according to the case of *Foundation for Human Rights Initiatives v Attorney General* (Constitutional Petition No. 20 of 2006) [2008], proof of these exceptional circumstances is not mandatory as the courts

have the discretion to grant bail even when none is proved, because in that case, reference was made to an excerpt in **Uganda vs Kizza Besigye Constitutional** Reference No. 20 of 2005 where it was held that;

"Both High Court and subordinate courts are still free to exercise their discretion judicially and to impose reasonable conditions on the applicant." In addition to the reasonable conditions imposed on the applicant by the court, Section 15(4) of the TIA provides that;

In considering whether or not the accused is likely to abscond, the court may take into account 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 sureties within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail;
- (c) Whether the accused has no 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.

In deciding whether or not to grant bail to the applicant, the court is enjoined to consider the accused's demonstration that he will not abscond trial, using the above

factors, which are considered individually. 20

Fixed place of abode:

In their affidavits supporting their application, the applicants stated that they have permanent and fixed places within the jurisdiction of this Honourable Court.

Section 15(4) (a) of the Trial on Indictments Act fortifies proof of a fixed place of abode as one of the determinants as to whether the applicant is likely to abscond 25 once granted bail but also the failure of proving the same, bail can be denied.

Paragraph 13(k) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions amplifies the above provision.

- While the law does not define the phrase 'fixed place of abode,' my interpretation is \$ \mathsf{S} \$ that a fixed place of abode ordinarily must be within the jurisdiction of the court considering the bail application. This means that one is traceable and is not likely to abscond, as one would easily attend court whenever required.
- Each applicant averred that their fixed place of abode is at Ogorai village, Odudui parish, Arapai Sub-County Soroti District. I have examined annexures "A" attached 10 to Ediau Joel's affidavit in support and annexure "C" attached to Okiror Gabriel's affidavit in support of his application; however, both annexures do not attest to each applicant's fixed place of abode but only communicate about each applicant's failure to furnish the court with their National Identity card.
- Such a communication must come from the government agency responsible for 15 national identification card generation since the writer of the letters alludes to a completed registration process but that the said body is yet to issue copies of the national identity cards.

Be that as it may, I have equally not seen any document other showing proof that each of the applicant has fixed and permanent place of abode which is within the 20 jurisdiction of this Honourable Court yet the onus is on each of the applicants to prove to the court their averments because a permanent and fixed place of abode is a question of fact and is important in consideration of bail applications since it determines whether an applicant will be traceable and will not abscond upon the 25 grat of bail.

The applicants have failed to prove that they have fixed places of abode in this court's jurisdiction.

Conclusion $\mathbf{\$S}$

Considering the fact that the applicants have failed to prove that they each have a fixed place of abode or permanent residency within this court's jurisdiction, then this application is rejected as not meeting the litimus test for such a grant.

The applicants my reapply for bail and should take into account the requirement of proof of fixed place as of abode the iniquities above. after

I so order. 28th June 2024.

Hon. Dr. Justice Henry Peter Adonyo

Judge

28th June 2024

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