

UGANDA / JUDGMENT

Ejiru alias Paul v Uganda (Criminal
Miscellaneous Application 79 of 2024)
[2025] UGHC 123 (13 March 2025)
[2025] UGHC 123

COURT
High Court of Uganda

BEFORE
Boniface Wamala, J

CASE / FILE NUMBER
Criminal Miscellaneous Application 79 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT SOROTI CRIMINAL MISCELLANEOUS
APPLICATION NO. 79 OF 2024 (Arising from Criminal Session Case No. 0129 OF 2023) EJIRU
CUSBERT alias PAUL VERSUS

UGANDA

BEFORE: HON. JUSTICE BONIFACE WAMALA RULING ON BAIL

Introduction

- [1] Ejiru Cusbert alias Paul (the applicant) was charged with the offence of Murder contrary to sections 188 & 189 [now sections 171 & 172] of the Penal Code Act (PCA), Cap 128. It was alleged that the applicant on 15th December 2022 at Camp Swahili Cell in Soroti City, with malice aforethought unlawfully killed Akwaso Patricia. The applicant brought this application by Notice of Motion under Articles 23(6)(a) and 28(1) & (3) of the Constitution of the Republic of Uganda and Sections 14 and 15 [now sections 15 & 16] of the Trial on Indictments Act, Cap 25 (TIA) seeking for an order that he be released on bail pending his trial by the High Court.
- [2] The grounds of the application are summarized in the Notice of Motion and also set out in the affidavit in support of the application deposed by the applicant. Briefly, the grounds are that the applicant was charged with the offence of Murder and has been in custody since 20th December 2022 when he was arrested. He was remanded to Soroti Government Prisons on 22nd December 2022. He stated that although he was committed to the High Court for trial, it is not known when the trial will take place. He

further stated that he is presumed innocent until proved guilty and he has a constitutional right to apply for bail. He stated that if released, he will not interfere with prosecution

witnesses. He has a fixed place of abode as shown in the affidavit in support and has two substantial sureties. He prayed that his application for bail be allowed by the Court.

- [3] The application was opposed through an affidavit in reply deposed by \$Ms.\$ Lunyolo Stella Maries, a State Attorney C/O ODDP Soroti Office, who stated that the offence of Murder with which the applicant is charged attracts a maximum penalty of death upon conviction and the applicant is most likely to abscond in case of his release on bail. She stated that although the applicant has a constitutional right to apply for bail, the discretion to grant bail remains a preserve of the Court. She further stated that if released on bail, the applicant is likely to interfere with key prosecution witnesses who are well known to him and are not under any protection. She also stated that the attached details of the sureties do not prove that they are substantial sureties. The deponent averred that the applicant has not demonstrated any special circumstances justifying his release on bail. She concluded that it is in the interest of justice that the bail application is denied.

Representation and Hearing

- [4] The applicant was represented by **Mr. Olobo James Felix** from \$M/s\$ Ewatu & Co. Advocates while the respondent (State) was represented by **Ms. Lunyolo Stella Maries** from the Office of the Director of Public Prosecutions (ODPP). The hearing proceeded by way of written submissions which were filed by both counsel and have been adopted and relied on by the Court.
- [5] The issue for determination by the Court is whether the applicant has *established sufficient grounds for his release on bail.*

Resolution by the Court

- [6] I will start by pointing out that bail is an agreement between the court and an applicant consisting of a bond, with or without surety, for a reasonable amount as the circumstances of the case permit, conditioned upon the applicant appearing before such a court on a date and time as named in the bond to attend his/her trial. See: Section 15(1) of the Trial on Indictments Act. *Cap 25 and Uganda v Lawrence Luzinda 1986 (HCB) 33.*
- [7] The foundational basis upon which the court is enjoined to exercise its discretion to allow or reject an application for bail is the presumption of innocence, based in law and particularly on Article 28(3)(a) of the Constitution. Article 28(3)(a) of the Constitution of the Republic of Uganda 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". This legal position 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.

[8] Under Article 23(6)(a) of the Constitution, it is provided that where a person is arrested in respect of a criminal offence, he/she 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. As such, the core aspects to be taken into consideration by the court when dealing with an application for bail are the presumption of innocence of an accused person, the right of the accused person to apply for bail, and the discretion of the court to either grant or reject the bail application.

[9] When exercising discretion to grant or refuse bail, the court is given further guidance through *The Constitution (Bail Guidelines for Courts of Judicature)*

(Practice) Directions 2022, which under paragraph 5 thereof sets out the following general principles to be taken into account by the court when considering a bail application, namely;

- 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 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.

[10] Under Section 16(1) of the Trial on Indictments Act, the High Court may refuse to grant bail to any person charged with any of offences stipulated under Section 16(2), Murder being one of them, unless such applicant proves, to the satisfaction of the court, that he or she will not abscond when released on bail and that exceptional circumstances exist justifying his or her release on bail. However, under the law, an applicant for bail is no longer required mandatorily to plead or prove exceptional circumstances following the decision of the Constitutional Court in *Foundation for Human Rights Initiatives v Attorney General*, Constitutional Petition No. 20 of 2006 wherein it was held that it is no longer mandatory to prove exceptional circumstances given the fact that the courts have the discretion to grant bail even when none is proved. In *Uganda* \$v\$ Kizza Besigye, Constitutional Reference No. 20 of 2005 the Court 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 an application for bail.

[11] On the case before me, the applicant's bail application has been opposed by the respondent on the following grounds;

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- (i) The applicant is likely to abscond given the gravity of the offence and the fact that the sureties presented by the applicant are not substantial;

- (ii) The applicant is likely to interfere with key prosecution witnesses who are known to him and are not under any protection; and
- (iii) It is in the interest of justice that the bail application is denied.

[12] Regarding the possibility of abscondment by the applicant if released on bail, it is provided for under Section 16(4) of the TIA 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 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 condition of his or her bail; and
- *d) whether there are other charges pending against the accused.*

[13] On the evidence before me, it was shown by the applicant that he has a fixed place of abode at Odokai Village, Asilang Parish, Atiira Sub-county in Serere District. The applicant produced copies of his National Identity Card and of a letter from the area L. C 1 Chairperson. I am satisfied that the applicant had a fixed place of abode in the area where he allegedly resided before his arrest.

[14] Concerning the sureties, Paragraph 15 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, sets out the determinants on the suitability of a surety as follows;

"Determining suitability of surety

- 1) When considering the suitability of a surety, the court shall take into account the following factors;
- *a) the age of the surety;*
- *b) work and residential address of the surety;*
- *c) character and antecedents of the surety;*
- *d) relationship to the accused person; and*
- *e) any other factor as the court may deem fit".*

[15] In sub-paragraph (2) of paragraph 15 of the Bail Guidelines, it is provided that the proposed surety shall provide documentary proof, which may include a copy of his or her National Identity Card, passport or alien's Identification Card; an introduction letter from the local council 1 chairperson of the area where the surety is ordinarily resident, among others.

[16] In the present case, the applicant produced two sureties who were identified and observed by the Court, namely, Olego John Paul, male aged 54 years, an Uncle to the applicant; and Aguti Esther Lucy, female aged 37 years, an Aunt to the applicant. The sureties presented their National Identity Cards and introductory letters from their respective LC.1 Chairpersons. It was established that the sureties have fixed places of abode and have a close relationship with the applicant. The sureties are therefore substantial.

[17] The other ground of objection by the respondent was that the applicant is likely to interfere with key prosecution witnesses who are well known to him and are currently under no protection. For the court to arrive at a conclusion as to whether or not an applicant for bail is likely to interfere with witnesses, the court has to look at a number of circumstances including the nature of the offence, the age of the applicant, how long the applicant has been on remand, how influential the applicant is in the community, among others. The applicant in his affidavit denied knowing the likely witnesses. I do not believe the

applicant's denial given that the charges indicate that the victim of the alleged offence was the applicant's wife. It is apparent that the persons likely to appear as witnesses are well known to the applicant. Given the gravity of the offence and the fact that the witnesses are likely to be related to the applicant, I find a possibility that the applicant will interfere with witnesses in the matter. I therefore find this ground of objection by the respondent made out.

[18] Given the above finding, the applicant has not satisfied the Court that he deserves to be released on bail. The interest of justice therefore dictates that the bail application by the applicant be denied. Accordingly, the application for bail is dismissed. The applicant shall await placing of his case on session for hearing.

It is so ordered.

Dated and signed this 13th day of March, 2025.

Amigana

Boniface Wamala JUDGE

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