

UGANDA / JUDGMENT

Emitu v Uganda (Miscellaneous Criminal Application 45 of 2023)

[2023] UGHC 480 (13 October 2023)

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COURT

High Court of Uganda

BEFORE

Adonyo, J

CASE / FILE NUMBER

Miscellaneous Criminal Application 45 of 2023

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The Republic of Uganda

In The High Court of Uganda Holden at Soroti

Miscellaneous Criminal Application No. 45 of 2023

(Arising out Criminal Case No. AA-018-2022 ODPP Case No. Ser-Co-088-2022, Police Case No SER CRB No.694 of 2021)

Emitu John Patrick ::::::::::::::::::::::::::::::

Versus

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

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling on Bail:

1. Background:

the criminal case brought against him.

The applicant brought this application under the provisions of Article 23(6) and 28(3) of the 1995 Constitution and Section 14 of Trail on Indictments Act, seeking to be released on bail pending the hearing and final determination of

The grounds in support of the application are set out in the Notice of motion and affidavit of the applicant which have Annextures A to I.

The application is not opposed by the respondent which was served on the 15th day of May, 2023 and has not filed an affidavit in reply to date, there is an affidavit of service to that effect on record.

The absence of an affidavit in reply by the Respondent implies that there is no rebuttal to this bail application such this matter proceeds ex parte and grounds

\$5\$

\$5\$ 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the notice of motion, the contents of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12 and 13 of the affidavit of the applicant and annexures A to I attached to affidavits in support of notice of motion are not contested or denied by the respondent.

2. The law on bail:

The general position of the law being that facts and averment in the affidavits 10 which are not specifically denied are deemed to have been admitted and admitted facts are not to be proved, I would find that rightly so.

The law for grant of bail by this honourable court is set out under section 15 of the Trial On Indictment Act Cap 23, specifically section, 15(1) (b), (4) (a), (b) and

\$(c)\$. 15

Section 15(4), 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
- 20
- 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.

The above law relating to bail pending trial is anchored upon Article 28(3)(a) of the Constitution which provides that;

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

It is arising from this constitutional presumption of innocence that a person 30 charged with a criminal matter may apply for bail pending the hearing of his

or her case. 5

On the other hand, Article 23(6)(a) of the Constitution provides that;

Where a person is arrested in respect of a criminal offence—

the person is entitled to apply to the court to be released on bail, and (a) the court may grant that person bail on such conditions as the court considers reasonable.

The above is the constitutional provision which gives right to a person arrested in respect of a criminal offence to apply for bail and the court may grant the same upon such terms as the court considers reasonable. The catch word here is the court "may".

The above constitutional provision is reiterated further under Section 14(1) of the Trial on Indictment Act which 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 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.

Notwithstanding the above provision of the law, Section 15(1) of the Trial on Indictment Act provides that;

...the court may refuse to grant bail to a person accused of an offence specified

in subsection (2) if he or she does not prove to the satisfaction of the court— 25 (a) that exceptional circumstances exist justifying his or her release on bail; and

(b) that he or she will not abscond when released on bail."

"Exceptional circumstances" is defined in the said section to mean any of the following—

(a) grave illness certified by a medical officer of the prison or other institution

or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody;

(b) a certificate of no objection signed by the Director of Public Prosecutions; or (c) the infancy or advanced age of the accused.

More important, Section 15(4) of the Trial on Indictment Act 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: 15 (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.

While Article 23 (6) (a) of the Constitution gives an accused person the right to

apply for bail, however, the grant of bail itself is discretionary matter for the court to decide. That means that the grant of bail is not automatic. The court must be convinced that such grant shall not compromise the administration of justice and that the interests of the general public is protected.

The law applicable to bail pending trial has been well settled in the case of

- Uganda (DPP) Vs. Col (RTD) Dr Kiiza Besigye, Constitution reference No. 20 of 2005 where it was held that an accused person has the right to apply to court to be released on bail with the court having the discretion as to whether to grant bail by virtue of Article 23 (6) (a) of the Constitution of Uganda, 1995 which provides that;
- Capital offences such as murder in this instance are bailable, however, whether the court is inclined to exercise the discretion to grant or not is a matter

depending on the circumstances of each case.

Section 14(1) of the Trial on Indictment Act amplifies Article 23(6)(a) of the Constitution thus:

- (1) 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 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 under paragraph 5 provide for the general principles applicable in the consideration of a bail application thus:

- The court shall, in considering a bail application, be guided by the following principles as enshrined in the Constitution
- a) the right of an applicant to be presumed innocent as provided for in article 28 (3) of the Constitution;
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- 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 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 interests of justice.

The above constitutes the law relating to bail. I will now turn to examine the merit of this application vis a vis the law and the facts presented before me by the applicant.

3. Considerations: 30

The applicant is represented by Ms. Amodoi Associates Advocates of Soroti who

- submitted that bail is a recognisance entered into by an accused person himself \$ \overline{5}\$ and his sureties, conditioning himself to appear for his or her trial with the failure of which may lead to a warrant of arrest issued against him or her and his being confined to custody of the state as the case is heard and finalized.
- It was further submitted that it was worth noting that the applicant is presumed innocent until proved guilty or otherwise as provided for by Article 28(3)(a) of 10 the Constitution of the Republic of Uganda, As Amended and Section 14 of Trial on Indictments Act which provides that the High Court may at any stage of the proceedings release an accused person on bail upon such terms and upon taking such recognizance consisting of a bond with or without sureties, for such an
- amount as reasonable in the circumstances of the case to appear before the 15 Court on such a date and on such time as is named in the bond. Further, it was submitted that the right to apply for bail and the powers of the High Court to grant bail have overtime been interpreted and reemphasized by
- Kiiza Besigye Constitutional Reference No. 20 of 2005 holding that an accused 20 person has a right to apply for bail though the court has the discretion to grant or refuse to grant bail.

the courts with the Supreme Court of Uganda in *Uganda (DPP)* -V- Col (Rtd) Dr.

Further it was contended that while Section 15 of Trail on Indictments Act provides that notwithstanding the provisions of section 14 of this Act, the court

- may refuse to grant bail to a person accused of an offence specified in sub 25 section 2 if he or she does not prove to the satisfaction of the court that;
- a) That exceptional circumstances exist justifying his or her release on bail and b) That he or she will not abscond when released on bail.

That in relation to exceptional circumstances, it was submitted that proof of exceptional circumstances was no longer mandatory as was held in the case of 30 Foundation for Human Rights Initiative V. A. G Constitutional Petition No 20 of

2006 and referred to by Justice Stephen Mubiru in *Abacha Yasin V Uganda* \$5\$ *Misc. Application No.004 of 2016* arising from *High Court Case No. 120 of 2015.* In relation to the applicant not absconding from his trial when released on bail. it was submitted that the applicant will not do so since he has a known fixed place of abode within the jurisdiction of the honourable court and the respondent has not objected to the same. \$10\$

As regards sureties, it was submitted that the applicant has three persons to whom the roles and duties of the sureties had been explained and that they have letters of introduction from the L. C.1 Chairperson of their areas of abode, confirmed by photocopies of their National IDs and passport size photographs attached to their National IDs as indicated in paragraph 7 of the affidavit of the

applicant and Annextures A-I, thereto, particulars of which are as below;

- a) Okello Juventine, biological father of the applicant and a resident of Ojeera Village, Omolotok Parish, Pingire Sub County, Kasilo County in Serere District. He holds both National Identity Card Number CM48097102A0ZA and introduction letter from LC1 Chairperson. Tel: No.0779959111.
- b) Omoko Jacob Enou, uncle to the applicant and a teacher at Kichinjaji Primary School and a resident of Usuk Cell, Kichinjaji Ward, Soroti City East Division in Soroti City. He holds both National Identity Card Number CM6803810278FD and introduction letter from LC1 Chairperson. Tel: No.0782969269.
- c) Odung Samson, brother to the applicant and a Principal Town Agent-Serere Town Council, a resident of Ajesa Cell, Osuguro Ward, Serere Town Council in Serere District. He holds both National Identity Card Number CM890971016NAA and introduction letter from LC1 Chairperson.
- It was submitted that from the foregoing that it is notable that the applicant and
- his sureties have introductory letters from the area LC1 and thus has been $\$ \mathit{S} \$$ properly identified and so the court should be pleased to find that the sureties presented by the applicant are substantial and thus grant him bail given the fact that in bail application like the current one, courts are enjoined to lean in the favour of and not against the liberty of the accused as long as the interest of
- justice will not be prejudiced and that is the reason why the court is empowered to exercise its discretion and grant bail even where none of the exceptional circumstances listed in the law have been proved. See *Kemigisa Adrine V-Uganda Criminal Application No. 97 of 2019*.

From the above, I find that the applicant has shown that he has a fixed place of

abode within the jurisdiction of this court and produced substantial sureties who 15 are closely related to him and who have bearing authority on him as they are his biological father, brother and uncle respectively and are thus capable of ensuring that he attends his trial.

The sureties' places of abode are also known as proved by the production of the

National Identity cards and introductory letters from LC1 Chairperson of their 20 areas and thus can be traced to ensure that they oblige the condition of ensuring that the applicant attend his trial.

It was further submitted that since the applicant has been committed to High Court then it presupposes that the investigations into the offence for which he

is charged with are complete with the respondent ready to adduce evidence 25 against the applicant who is said to know not any of the witnesses that the respondent intends to bring to testify against him as even the respondent has not adduced any evidence by way of affidavit evidence to prove that the applicant will interfere with the unknown witnesses and any further investigations. 30

Since the respondent has not filed any affidavit in opposition to this assertion, I

would conclude that indeed it is true that the applicant will not be able to S interfere with the witnesses in this matter since even they are yet to be disclosed.

The applicant also prayed for non-cash bail and invited the court to follow the decision of Hon Godi Akbar vs Uganda Criminal Application No. 20 of 2009, Col

(Rtd) Dr. Kizza Besigye vs Uganda Criminal Application No. 83 of 2016 wherein \$10\$ Court granted the applicants non cash bail despite being indicted with Murder and Treason charges, respectively and all the sureties be bonded to non-cash terms.

In respect to the prayers that the applicant be granted a non-cash bail on the basis of the cited cases above, I would beg to differ for each case must be 15 considered on its own merit and circumstances with the court using its discretion to decide whether or not such a prayer is worthy of consideration. In this case, it is my humble consideration that the applicant is charged with very serious offence and the likelihood of absconding is high such that it is the duty

of this court to ensure that the administration of justice is not subverted by grant 20 bail on conditions that are not strong enough to warrant the applicant attend his trial given the fact that he is already committed for trial.

On the basis of the evidence put forward, I am satisfied that this is a case where I should exercise my discretion and grant bail to the applicant pending his trial,

- which I do so, upon the following conditions; 25

- a) The applicant to deposit a Cash bond of Shs. 2,000,000/-.
- b) The applicant and each of their sureties are to provide a recent photograph, telephone numbers and copies of national IDs to the Registrar of this court and the Chief Resident State Attorney, Soroti for file purposes.
- c) Each of the Sureties presented by the applicant is bound to this court in the sum of Shs. \$5,000,000/- \$ not cash.
- d) The Applicant to report to the Registrar of the Court once a month on the last Monday of each month with effect from 30/10/2023 until otherwise directed by court.
- I so order. 10

Hon. Justice Dr Henry Peter Adonyo

Judge 13th October, 2023

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