

UGANDA / JUDGMENT

ILakut v Uganda (Miscellaneous Application 28 of 2022) [2024]

UGHC 178 (12 April 2024)

[2024] UGHC 178

COURT

High Court of Uganda

BEFORE

Adonyo, J

CASE / FILE NUMBER

Miscellaneous Application 28 of 2022

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The Republic of Uganda

In the High Court of Uganda at Soroti

Miscellaneous Application No. 0028 of 2022

(Arising from Criminal Session Case No. 0219 of 2022)

Ilakut Lazarus ::::::::::: 10 <pre>.....

Versus

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

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

1) Introduction:

- This is an application by way of Notice of motion brought under section 14(1) of 20 the Trial on Indictments Act and Article 23 (6)(a) & 28 (3) of the Constitution of Uganda for orders that the Applicant be released on bail pending his trial and any other orders that court deems fit.
- 2) Grounds:
- The grounds of the application as set out in the application and supporting 25 affidavit sworn by the applicant are that the applicant was on the 4th day of April

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2022 arrested and taken to Kumi Central Police station and subsequently charged § with the offence of aggravated defilement and later imprisoned at Kumi government prison.

That the applicant was committed to High Court for trial and further remanded to Kumi Government prison and is not sure of when the hearing of his case shall commence. The applicant shall not abscond if released on bail.

That the applicant is presumed innocent until proved guilty or until he pleads guilty to the charge of aggravated defilement.

That the offence of aggravated robbery is bailable and he has a constitutional right to apply to be released on bail on such terms and conditions that shall be set by this court.

That the applicant has two sureties who understand their obligation towards this court and are ready to be presented before the court for examination.

That the applicant before arrest and detention was a permanent resident at Okuoba cell, Okuoba ward, North Division, Kumi Municipality, Kumi District and if released he will continue residing at the same address.

The respondent in an affidavit in reply sworn by State Attorney Okello Paul objected to this application on the grounds the offence with which the applicant is charged attracts maximum penalty of death upon conviction thus the applicant is most likely to abscond bail in fear of the severe sentence upon conviction.

That the prosecution is ready with its witnesses since the accused has been 25 committed for trial before this honourable hence this application is intended to delay the hearing of case.

That although the applicant has a constitutional right to apply for bail but grant S is discretionary. That although the applicant has a constitutional right to apply for bail, grant is discretionary.

That the applicant is likely to interfere with prosecution witnesses considering that the offence was committed with a lot of violence and attracts a death sentence.

That the introductory letters purport that the applicant and sureties are residents of those areas however, no documentary proof such as a land sale agreement, certificate of title and or tenancy agreement has been adduced to prove that they have a fixed place of abode within the jurisdiction of this court.

- That the respondent verily believes that this honourable court is taking 15 considerable measures to ensure that the committed accused person is cause listed for trial as soon as possible and there is no need for the applicant to dwell on uncertainties of when the case shall be heard.
- 3) Representation:

The applicant was represented by M/s Legal Aid Project of the ULS and the 20 respondent by the Office of the DPP Soroti.

This application proceeded by way of written submissions and the same will be considered in its determination.

- 4) Determination:
- The law relating to bail in Uganda is well settled. In *Uganda (DPP) Vs. Col (RTD) Dr.* 25 Kiiza Besigye, Constitution Reference No. 20 of 2005, the Constitutional Court held that the accused has the right to apply to court to be released on bail and the court has the discretion whether to grant bail under Article 23 (6) (a) of the Constitution of Uganda, 1995.

Article 23 (6) (a) of the Constitution of Uganda, 1995 provides that; \$5\$

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;

Capital offences such as aggravated robbery in this instance are bailable, however,

whether the court is inclined to exercise the discretion to grant or not is a matter 10 dependent on the circumstances of each case.

For bail applications before the High Court, the provisions of Section 14(1) of the Trial on Indictment Act which amplifies Article 23(6)(a) of the Constitution applies.

- \$15\$ The provisions of Section 14(1) of the Trial on Indictment Act provides as follows:
- (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.

While considering any bail application before it, the High Court **may** take into account The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 whose paragraph 5 thereof provide for the general principles applicable in the consideration of a bail application.

25 The said Paragraph 5 provides that;

> 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 \$\mathsf{S}\$ 28(3)(a) 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 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.

Furthermore, the court is entreated to ensure that the provisions of Paragraph 12 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions which provides for contents of a bail application is complied with by an applicant thus;

An application for bail shall contain the particulars of the applicant, accompanied by-

- (a) a copy of the applicant's national identity card, or passport or aliens identification card, or employment card, or student identity card;
- (b) an introduction letter from the Local Council 1 chairperson of the area where the applicant resides;
- (c) where applicable, asylum seeker or refugee registration documents issued by the Office of the Prime Minister; and
- (d) expounded grounds for the application.

In any event, the High Court may refuse to grant bail to an applicant if he or she does not comply with the provisions of Section 15(1) of the Trial on Indictment Act which provides that;

Notwithstanding section 14, 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-

- (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."

In this section, "exceptional circumstances" means any of the following— 10

- (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. 15

Section 15(4) of the said Act further 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 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. 25

I will now turn to consider the exigency of this application vis a vis the legal considerations above.

a) Fixed place of abode: \$5\$

\$10\$

The applicant under paragraph 10 of his affidavit stated that before his arrest and detention was a permanent resident at Okuoba cell, Okuoba ward, North Division, Kumi Municipality, Kumi District and if released he will continue residing at the same address. He states that he does not intend to change his place of residence from the jurisdiction of this court.

Annexure 'D' to the application is an introduction letter dated 11th October 2022 from the LC1 Okuba Cell indicating that the applicant is a bonafide resident of his area of jurisdiction.

The applicant, however, did not attach a copy of his national ID or any form of identification. Counsel for the applicant in her submissions in rejoinder brought 15 it to this court's attention that at the time of arrest and detention of the applicant's national Identity card had been confiscated by police together with his other personal belongings and all effort to obtain the same have been futile.

It should be noted that the essence of a fixed place of abode is traceability of an accused in the event of abscondment or whenever necessary.

Section 15(4) (a) of the Trial on Indictment Act provides that in considering whether an accused is likely to abscond court may take into consideration whether the applicant has a fixed place of abode within the jurisdiction of the court. This provision of the law is amplified by paragraph 13(k) of the Constitution

(Bail Guidelines for Courts of Judicature) (Practice) Directions. 25

While the law does not define the phrase 'fixed place of abode' what is important is that the fixed place of abode must be within the jurisdiction of the court considering the bail application.

Where an applicant fails to prove this under section 15(1) of the Trial on $\mathcal{S}$ Indictment Act the court may deny him bail.

However, considering the fact that apart from the confiscated national ID of the applicant by the police; which fact is not denied by the respondent, I find that the applicant has on the basis of the evidence put forward proved that he has a fixed

- place of abode within the jurisdiction of their Honourable court as proved by the 10 letter by the LC1 Okouba cell which in my considered view is sufficient to prove that requirement since the LCs are governmental authorities with the requisite knowledge and information to certify such a requirement. The ground of a fixed place of abode is thus proved.
- 15 b) Substantial sureties:

The applicant under paragraph 9 of his affidavit in support states that he has two sureties who include Omongot Joseph and Iriaka Stella. However, in submissions these sureties were changed to Akello Beatrice and Acibu David.

Akello Beatrice is an aunt to the applicant, resident of Okuoba cell, Okuoba ward, North Division, Kumi Municipality in Kumi District. Annexure 'C' to the 20 submissions is an introduction letter dated 5th of June 2023 from the LC1 Okuoba, it indicates that Akello is a resident of Okuoba cell and is standing as a surety for her nephew the applicant.

Annexure 'D' to the submissions is a copy of her national ID CF650211011MJJ,

indicating she is 59 years old and a resident of Okoona united, Bukedea ward, 25 Bukedea Town Council in Bukedea District.

Acibu David is an uncle to the applicant and resident of Opegei Cell A, Moruapesur ward, eastern division Soroti City. Annexure 'E' to the submissions is an introduction letter dated 19th of June 2023 from the LC1 of Opegei cell A, it

indicates that Acibu is a true resident of Opegei and is requesting Court to bail $\mathcal{S}$ out his nephew. That Acibu has been a law abiding person in society.

Annexure 'F' is a copy of his national ID CM85038102DDND, indicating he is 38 years old and a resident of Opegei A, Moruapesur in Soroti.

Counsel submitted that she labored to explain to the sureties their obligations and consequences of failure to ensure that the accused person attends court and 10 they all seem to have understood their obligations. He prayed that this court finds them substantial.

Counsel added that the applicant when released on bail will attend court whenever required and the sureties will ensure that the applicant attends court when called upon.

Paragraph 15 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions provides for determining factors on the suitability of a surety thus;

- (1) When considering the suitability of a surety, the court shall take into account the following factors— 20
 - (a) the age of the surety;
 - (b) work and residence 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. 25
- (2) Subject to sub-paragraph (1) the proposed surety shall provide documentary proof including —
 - (a) a copy of his or her national identity card, passport or aliens' identification card; \$
\\mathsf{S}\$ (b) an introduction letter from the Local Council 1 Chairperson of the area where the surety is ordinarily resident; or
 - (c) asylum seeker or refugee registration documents issued by the Office of the Prime Minister.

From what is adduced in evidence by the applicant, I would find that the sureties 10 substantial given the fact that their identities, their connection to the applicant and their places of abode are proved.

I have also considered the age of these sureties and the fact that they are closely related to the applicant which finding of fact indicates and gives them the ability

of control over the applicant and the ensuring that he attends court whenever 15 called upon.

I note that there is a variance in the residence of Akello Beatrice as seen in her letter of introduction and her national ID where she registered for the same. These difference within the two documents, in my considered view, does not

negate the fact of the surety coming from Okuoda as indicated and proven by 20 their LC letters as registration for National identity cards can be done either from where one comes from or where one is working.

Therefore, since the surety presented an introduction letter from the local council 1 chairperson of where she is ordinarily resident, the deviation in the

25 details is not fatal to this application.

> Further, Article 28(3)(a) of the Constitution provides that all persons charged with criminal offences are presumed innocent till proven guilty. Bail is thus meant to safeguard the applicant's right to liberty because he is presumed innocent till proven otherwise and must not be denied whimsically. As the respondent would

- want this court to so do basing on the argument that the applicant and sureties $\$$ have provided no documentary proof such as a land sale agreement, certificate of title and or tenancy agreement in order to prove that they have a fixed place of abode within the jurisdiction of this court. These proposed requirements are not provided for in the law and neither does the Practice Directions point to these
- requirements. I would thus overrule the submissions of the respondent to that 10 effect and proceed to conclude that the applicant has provided substantial sureties whose places of abode are known and are within the jurisdiction of this Honourable court

5) Conclusion:

On the basis of the evidence put forward by the applicant, I am satisfied that this 15 is a case where it should exercise its discretion and grant bail to the applicant pending his trial but taking into account the seriousness of the offence which has been brought against him.

6) Orders:

- Bail is accordingly granted to the applicant on the following conditions; 20
- a) The applicant to deposit Cash Bond of Shs. \$1,000,000/=
- b) Each of the sureties presented by the applicant is to sign a non-cash bond in the sum of Shs. 5,000,000/= which is forfeitable to the State if they fail to carry out their duties of sureties as provided for in the law.
- c) The applicant and each of his sureties are to provide a recent photograph, telephone numbers and copies national IDs to the Registrar of this court and to the Chief Resident State Attorney, Soroti for filing and record purposes.
- d) The Applicant to report to the Registrar of the Court once a month on the first Monday of each month with effect from 06/05/2024 until otherwise directed by court.

I so order.

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Hon. Justice Dr Henry Peter Adonyo

Judge

12th April 2024

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