

UGANDA / JUDGMENT

Kaggwa v Uganda (Criminal Miscellaneous Application 40 of 2024) [2025] UGHC 57 (10 January 2025) [2025] UGHC 57

COURT

High Court of Uganda

BEFORE

Karemani Jamson K, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 40 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KIBOGA

CRIMINAL MISCELLANEOUS APPLICATION N.0040 OF 2024

(Arising from Criminal Case No.349 of 2024 at Kiboga)

KAGGWA SULAIMAN.....

VERSUS

UGANDA.....

BEFORE HON. MR JUSTICE KAREMANI JAMSON. K

RULING

This is a ruling arising from an application brought by Notice Motion under Articles 23 (6) (a)& (b) and 28 (3) (a) of the Constitution Uganda 1995, Section 14(1) of the Trial on Indictment Act Cap 23 and Rules 5,6,7,8,10,11,12 and 14 of the Constitution (Bail Guidelines for Courts of Judicature) Practice Directions 2021).

It seeks the order that:

- 1. The applicant (A2) be released on mandatory bail in respect of the offence of assault occasioning actual bodily harm (count 2) pending the trial and determination of the same criminal case against the applicant.

- The application is supported by the affidavit of the applicant one Kaggwa Sulaiman which sets out the grounds of the application as follows:

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[illegible]

- 4. That the applicant is entitled to mandatory bail in respect of the offence of assault occasioning actual bodily harm.
- 5. That the applicant is of advanced age of 58 years old having been born on 10th April 1966.
- The applicant has a permanent place of residence at Kirinda village Kasega parish Kapeke Sub county Kiboga East County Kiboga District which is within the geographical jurisdiction of this honorable court.
- That the applicant is a responsible citizen of Uganda, a peasant farmer and butcher.
- 8. That the applicant is a responsible parent with school going children a wife and is a bread winner of the family.
- That the applicant has no criminal record.
- 10. That the applicant is not threat to any court process and is willing to appear before the High Court of Uganda for trial or mention of the case as and when required in the event he is released on bail.
- 11. That the applicant will not interfere with the prosecution witnesses nor is he a threat to the victim and/or the deceased's relatives (if any)

- 12. That the applicant being presumed to be innocent until proved guilty since he pleaded not guilty to the offences he was charged with.
- 13. That the trial of the criminal case is likely to delay and in the event the prosecution turns out unsuccessful the applicant's personal liberty would have been grossly violated.
- 14. That this honorable court has wide discretionary powers to release the applicant on bail.
- 15. That the alleged facts of the case were not a prior planned murder and/or assault, but a situation where suspected chicken thieves were allegedly beaten by an angry mob upon failure to account for the stolen chicken.
- 16. That the applicant has substantial sureties who are willing to ensure compliance with all the bail conditions once the applicant is released on bail.
- 17. That exceptional circumstances exist for this honorable court to be pleased to release the applicant on bail upon such terms and conditions as this honorable court may deem fit.

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18. It is in the interest of justice and equity that the applicant be released on bail pending the trial.

The respondent filed no affidavit in reply despite proof that there was effective service. The application was therefore unopposed.

Representation

The applicant was represented by Mr. Patrick Katende of M/S Patrick Katende & Advocates The applicants counsel made oral submissions in this application that will be considered.

The law on bail

Article 23 (6) (a) of the Constitution of Uganda provides thus;

"Where a person is arrested in respect of a criminal offence-

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

Section 14(1) of the Trial on Indictment Act provides thus;

"The High Court may at any stage in the proceedings release the accused on bail, that is to say on taking from him or her a recognizance 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 such time as is named in the bond"

Section 15 (1) of the Trial on Indictment Act provides thus;

"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 the satisfaction of 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"

Section 15(3) of the above mentioned Act provides thus;

"In this section the "exceptional circumstances" 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."

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Section 15 (4) of the same Act provides;

"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 place of abode within the jurisdiction of the court or 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 bail;
- (c) whether the accused has a previous accession 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;

The Constitutional (Bail Guidelines for courts of Judicature) Practice Directions 2022 No.5 provides the principles to be considered in an application for bail.

Submissions

The learned counsel for the applicant submitted that this court finds that the applicant has fulfilled the requirements for grant of bail by presenting substantial sureties and to accordingly release him on bail.

Decision

It is trite law that while the accused person has a right to apply for bail the court has the discretion to grant the same and proof of special circumstances is not mandatory. See the case Dr. Kiiza Besigye vs Uganda Constitutional Reference No.20 of 2005

The accused ought to be granted bail if he/she has a fixed place of abode, has substantial sureties guaranteeing his/her attendance of court and being willing to abide by all other conditions.

However, court must keep alive of the grave nature of the offence charged before it releases the accused/applicant on bail or not.

In the instant case the accused is charged with the offence of Murder contrary to Sections 188 and 189 of the Penal Code Act which attracts a maximum sentence of death.

I have looked at the sureties in this matter and these are my findings:

Surety No.1 Segawa Ibrahim has proved that he has a fixed place of abode at Kirinda village, Kasega parish Kapeke Sub-county in Kiboga District from the documents

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presented i.e. the letter of introduction by the chairperson of his areas and the national identity card. He is therefore a substantial surety.

Surety No.2 Mubiru Bumbakali has presented a card and which shows that he is a resident of Kirinda village, Kasega parish Kapeke Sub-county in Kiboga District and a national identity card which shows that he is a resident of Kikubampanga village Kikubampanga Ward Kakiri Town Council Busiro County in Wakiso District.

An explanation has been given for the discrepancy in the 2nd surety's national identity card and the letter of introduction, that the surety shifted from Wakiso District to Kiboga District.

Two of the sureties presented have been found to be substantial to guarantee the release of the accused on bail.

In all I do find that the application has merits for grant of bail and I grant the accused bail. The conditions set are as follows:

- 1. That applicant will deposit shs.2.000.000= in court.
- 2. Each of the sureties presented will each execute a bond of shs.20.000.000= not $\frac{1}{2}$ cash.

- 3. The accused will keep reporting to the Deputy Registrar of this court every after second week of the month beginning with 10th Day of February of 2025 until the disposal of the main case.

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KAREMANI JAMSON. K

JUDGE.

10.01.2025

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