

UGANDA / JUDGMENT

Kaita Ashraf v Uganda (Criminal Miscellaneous Application 7 of 2025) [2025] UGHC 377 (2 June 2025)

[2025] UGHC 377

COURT
High Court of Uganda

BEFORE
Godfrey Himbaza, J

CASE / FILE NUMBER
Criminal Miscellaneous Application 7 of 2025

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT LI,IWERO

HCT- I 7-CRCM-0007 -2025

(Arising from Criminal Case No. BBO/O848912o241

(Arising out of LIIW-CO-AA-O56-20241

KAITA ASHIRAF :.....]::]..... APPLICANT

vs

UGANDA :.....RESPONDENT

BEFORE: HON. JUSTICE GODFREY HIMBAZA**RULING****Introduction**

- 1. This application was brought by Notice of Motion filed on 8s April 2025 by the accused/ applicant Kaita Ashraf, through his advocates M / S MAALC Advocates. The application was brought under Article 23(6), 23(21 (b) of the Constitution, Section 14 of the Trial on Indictments Act and Rule 3 of the Judicature (Criminal Procedure) (Applications) Rules SI 13-18. The application sought for an order releasing the applicant on bail pending the hearing of Criminal Case No. BBO I 08489 12023.
- 2. The grounds in support of this application are contained in the affidavit of Ssempijja Muhammad the applicant/ accused.
- 3. The respondent objected to the application and filed an affidavit in reply deposed by Sandra Nakire, the Resident Senior State Attorney -ODPP Luwero.
- 4. Both parties Iled their respective written submissions but when the application came up for hearing on 19m May 2025, the parties highlighted their submissions orally, which I have considered while determining this application.

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Legal Representation

- 5. The applicant was represented by Joachim Elepu of M/S MAALC Advocates, while the respondent was represented by Kirabo Racheal, State Attorney, Office of the Director Public Prosecution, Luwero office.

Background to the application

- 6. The applicant/ accused was arrested and charged with the offence of Murder cls 171 & 172 of the Penal Code Act Cap 128. The applicant/ accused has since been committed for trial by this court and has been on remand for a period of 1 year. The applicant then filed this application seeking to be released on bail on the following grounds;
- a) That the applicant is charged with murder contrary to section 171 and 172 of Penal Code Act Cap 128.
- b) That the applicant lost the responsibility to his family since his arrest.
- c) That the Director of Public Prosecutions has failed to commence the prosecution of the applicant thereby violating his rights to a fair trial and speedy hearing as provided in the Constitution of Uganda.

- d) The applicant is incurring a lot of legal expenses.
- ⁷. Tlee applicant at the hearing presented three sureties namely, Zaamu Muhammed, the grandmother of the applicant dealing in the business of general merchandise from Nkokonjeru LC 1, Bombo Town Council, Nyimbwa Subcounty, Luwero District. She presented her national ID NIN no: CF650231099XJD, and an LC Letter dated 7ft April 2025. His 2nd surety was Salim Abdalla 40 years old maternal uncle to the applicant a boda boda rider and resident of Nkokonjeru LCI Bombo Town Council and National ID NIN: CM 840231096ARD. He also presented his LC 1 introduction letter dated 7fr April 2025. The applicant further presented the 3rd surety Fatuma Maneno 32 years a biological sister and a resident of Nkokonjeru LC1, National ID No. CF92023100QACA. The applicant also presented his National Identity card NIN: CM95023 101CUTH.

8. The state on the other hand opposed the application on the grounds that; 2lPage

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- a) Bail is discretionary and the court needs to balance the constitutional rights of the applicant and the needs of the society.
- b) The sureties presented are not substantial and they are not capable of compelling attendance of the applicant whenever court needs him.
- c) As much as the accused person alleges that they have a fixed place of abode, the offence with which the Applicant is charged is grave in nature and attracts a death sentence on conviction, therefore there is a high likelihood for the applicant to abscond so as to evade punishment.
- d) The applicant has not shown any exceptional circumstances that would warrant this honourable court to exercise its discretion by granting him bail.

Consideration of the Application

Applicant's submissions

- 9. Counsel for the applicant cited the law governing the grant of bail as Article 23 (61 (a),28(3) (a) of the Constitution, section 14 (1) and 15(1,2,3 and 4) of the Trial on Indictments Act, the Criminal Procedure Act, and the Constitution (Bail Guidelines for Courts of Judicature) Practice Directions 2022. Counsel submitted that the applicant has a right to apply for bail and the offence of murder which he is charged with, is bailable by this honourable court. Furthermore, it was counsel's submission that the applicant has a fixed place of abode being a resident of Nkonkonjeru LCI, Bombo Town council, Nyimbwa sub county, Luwero and that he also has substantial sureties being close relatives who reside within the same locality as the applicant.

- 10. Counsel cited Article 26 (6) (a) of the Constitution that guarantees the right to apply to court to be released on bail and court may grant that person bail on such conditions as it considers reasonable. Counsel submitted that bail is derived from the presumption of innocence enshrined under Article 28(3)(a) of the Constitution. That a bail applicant must not be deprived of his or her freedom unnecessarily or as a punishment where they have not been

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proven guilty by a competent court of Law. He relied on the case of *Cot. l. Rtdl Dr. I{\ilza Besigye Vs. Uganda Crim Application no. 0020 of 2016* (unreported). Counsel further relied on the case of *Attorney General Vs, Tumushabe* (2008) where Justice Mulenga held as follows;

"It is clear to me that clause 6 of Article 23 applies to every person awaiting trial for a criminal offence without exception under paragraph (a) of the clause, every such person at any time upon or after being charged may apply for release on bail and the court may at its discretion grant the applicant bail irrespective of the class of the criminal offence for which the person is charged".

Respondent's submissions.

- 11. The State Attorney relied on the case of *Lawrence Luzinda Vs Uganda* (1986) HCB 33, where Justice Okello defined bail as an agreement between the court, on one hand and the accused and sureties on the other hand that the accused will attend his trial when summoned to do so.
- 12. She further cited the case of *Foundation for Human Rights Initiative Vs. Attorney General Constitutional Appeal no. 312009* which stated that the accused's right to bail is not absolute, it has to be enjoyed within the confines of the Law and that there has to be a Constitutional balance of everybody's rights. Further, that denial to grant bail does not contradict the accused's right of innocence and neither does it suggest that the accused is guilty of the offence he is being charged with.
- 13. Furthermore, the State Attorney submitted that proof of exceptional circumstances is mandatory. The State Attorney further submitted that Section 15 of the Trial on Indictment Act provides for the release of an accused person on bail but section 16 provides that court may refuse to grant bail to an accused person if he or she does not prove to the satisfaction of the court that;
 - a) Exceptional circumstances exist justifying his or her release on bail and;
 - b) That he or she will not abscond when released.

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- 14. She further relied on section 16(3) which provides that 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 from the DPP.
 - c) Infancy or advanced age of the accused.
- 15. She also relied on section 16(4) which provides that in considering whether or not an accused person 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 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 person has on 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.
- 16. The State Attorney submitted that the accused person has satisfied some of the other grounds but failed to prove the following crucial grounds;
 - a) Whether the accused is not likely to abscond
 - b) Whether the accused has presented sound sureties
 - c) Whether the accused has proved exceptional circumstances.
- 17. On whether the accused has a fixed place of abode, the State Attorney submitted that the accused person presented LCI introductory letter introducing the accused person as a resident of Nkokonjeru LC1, Bombo Town Council, but according to her it was lacking in the sense that it does not introduce him as a person of good character in the community.
- 18. On the question whether the accused person shall not abscond, She cited the case of Obey Christopher & Ors Vs Uganda ACD Misc. Application No. (045 of 2015 and stated that the offence of Murder being a grave offence

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whose likely penalty upon conviction attracts a maximum punishment of death, there is a higher likelihood of the accused person to abscond in case he is released on bail, fearing the harsh punishment.

- 19. On whether the accused person has introduced sound sureties within the jurisdiction of court to undertake that the accused person shall comply with the conditions, she submitted that the sureties presented were not substantial because they did not adduce evidence of their financial capacity to forfeit their bonds in the event that the accused person absconds
- 20. Lastly, she submitted that the accused have failed to prove exceptional circumstances and therefore should not be granted bail.

Determination by court

(it Analysis of the Law and Evidence

21. The right to apply for bail is a Constitutional right premised under the presumption of innocence as enshrined in Articles 23(6) (a) and 28(3) of the Constitution of Uganda. Section 23(6)(a) 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 the court may grant that person bail on such conditions as the court considers reasonable".

However, the decision to release an accused person on bail solely rests in the discretion of court upon considering certain factors or circumstances on a case-by-case basis, as to whether the accused person should be granted bail or not. See: Uganda rn Kllza Beslgye Corstltutlional Reference No. 20 of2005, and Fouadatlon for Human Rights Initiative Vs. Attortrey General. Constltutlional Petltion No. 020 of 2006.

The primary principle for which a court may release a person on bail pending trial is the presumption of innocence as enshrined under Article 28(3) of the Constitution which provides that every person who is charged with a criminal offence sha.ll be presumed to be innocent until proven guilty or until that person has pleaded guilty.

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Section 15(1) of the Trial on Indictments Act in addition to upholding the right of accused person to apply for bail, clothes court with the discretion to release an accused person on bail at any stage of the proceedings.

Guldeline 5, of the Bail Guldellues provides the general principles i.e presumption of innocence, the right to personal liberty, applicant's obligations to attend the trial, discretion ofthe court to grant bail on such terms as the court considers reasonable and the need to balance the rights of the applicant and the interest of Justice. See Col. (Rtd| Klzza Besigye & Abed Lutale Vs. Uganda.

22. Having carefully perused through the record and listened to the submissions of both counsel, as well as the affidavits and written submissions, it is not in contention that the applicant has a fixed place of abode in Nkokonjeru LC1, Bombo Town Council which is within the jurisdiction of this honourable court. He has also presented his original National ID. Paragraph 12(al pl of the Ball Guidelines provides that an application for bail shall

contain the particulars of the applicant accompanied by a copy of the National Identity Card and an introduction letter endorsed by the LC1 Chairperson of the area where the applicant resides. Justice Remmy Kasule (retired) stated in the case of Mugenyi Steven Vs. Uganda Miscellaneous Application no. 0065 of 2004 that;

"The onus is on the applicant to satisfy the court that he has a permanent place of abode in a particular village, sub-county and district. This is to enable the court exercise jurisdiction over the applicant while on bail being able to trace his whereabouts whenever it is necessary/

- 23. Indeed, the applicant satisfied this requirement by furnishing an introductory letter for Nkokonjeru, LC 1 Bombo sub county, as well as his National Identity Card.
- 24. What is in contention is whether the applicant has presented sureties who are substantial and who will be able to ensure his attendance to court as and when directed and if there exist exceptional circumstances for this court to grant bail to the applicant.

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25. With regard to the sureties, the term "Surety" is defined by paragraph 4 of the Constitution and Bail Guideline for Courts of Judicature I Practice directions Legal Notice No.8 of 2022 to mean;

'A person who undertakes to ensure that the applicant will appear in Court and abide by the bail conditions and who furnishes security which may be forfeited to the state if the applicant fails to appear in Court'. The main duty of a surety lies therein.

26. Section 6(41 F) of the Trial on Indictments Act and paragraph 13(1) of the bail guidelines provide that in considering whether an accused person is likely to abscond, the court shall consider whether the accused has sound sureties within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail.

Guideline 15 of the Bail Guidelines provides that;

- (i) Factors that court shall take into account in determining the suitability of a surety are 1, age, work, and residence address, character and antecedents, relationship to the applicant and any other factor court may deem fit.
- (ii) Documentation in respect of a surety that must accompany an application for bail including a copy of the national ID, Passport or alien identification card, introduction letter from the LC chairperson of the area where the surety is ordinarily resident.
- 27. The applicant presented three sureties; Zamu Muhammed, Abdallah Salim and Fatuma Maneno. However, I agree with the State Attorney that the sureties presented have failed to prove their financial capacity to be able to forfeit their bonds in case the applicant absconds.

- 28. I note that some of the sureties are boda boda riders, others like the first surety is an old lady who is in her late 70's who in my view may not have the energy to compel the accused person to attend court in case he becomes stubborn.

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- 29 . The sureties did not give to Court detailed description of the nature of their work and the estimated income they earn in order to give a picture to court whether they will be able to manage to pay the bonds in case the accused person absconds. They all gave a blanket statement that they were business people. I agree with the State Attorney that failure to prove their financial standing makes their substantiality doubtful in view of the nature of the offence charged.
- 30. I am persuaded by the observation of my learned sister Nakachwa J(as she then was) in Sher Singh Shekhawat Vs Uganda Criminal Misc Application No. 11 of 2023 that;

"In considering the suitability of sureties, courts attach almost equal importance to the quality of the relationship and social standing of the proposed surety with the accused. "

- 31. Noteworthy, the applicant is charged with the offence of murder allegedly committed during a mob justice. This in my view, points to the sensitivity of this case and the public interest with which it carries in the community.
- 32. Furthermore, Section 16(3) of the Trial on Indictments Act Cap 25, read together with Paragraph 16(2) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice Directions, 2022) posit that in capital offences, there is need to prove exceptional circumstances to wit;
 - a) Grave illness certified by a medical officer of prison or an institution in which the accused is detained
 - b) A certificate of no objection signed by the Director of Public Prosecutions
 - c) Infancy or advanced age
- 33. It is trite that the requirement to prove the aforementioned circumstances does not usurp the court's discretion on whether to grant or not to grant bail in the given circumstances. Be that as it may, this court cannot overlook the gravity of the offence with which the applicant has been charged with and the violent nature within which it was allegedly committed -mob violence. Counsel for the applicant argued that the requirement to prove exceptional

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circumstances was done away with in the case of Rtd Col. Kizza Besigye & Hajlt Obed Lutale Vs. Uganda.(supraf. It is my considered view that this ruling is persuasive to this court. More so, the provisions of Section 16(3) of the Trial on Indictment Act and paragraph LaQl of the Constitution (Bail) Guidelines are still in force and have never been amended or repealed by the law makers.

- 34. It is also my considered view that owing to the fact that the applicant has recently been committed to this Court for trial, there isn't likely to be substantial delay in hearing and disposing off his case.
- 35. For the above reasons coupled with the gravity of the offence charged , there is a likelihood of the applicant absconding bail owing to the absence of substantial sureties and the severity of the impending sentence for the alleged offence. In the case of Col. (Rtd) Ktiza Besigye & Anor Vs Uganda (supra), my learned sister Justice Comfort Kania while denying bail to the applicant after pointing out the gravity of the offence charged stated as follows;

"Counsel for the respondent submitted that the charges with which the applicant are charged, treason involves violent change of Government. I am inclined to side with the respondent that treason being an offence that involves overthrowing government which act is accompanied by violence, an act of treason impacts on national security/.

- 36. I observe in the above statement that much as the applicant had met all the other bail conditions, gravity of the offence committed was a factor that was put into consideration to deny the applicant bail.
- 37. Furthermore, on the issue of gravity of the offence, in the same case of Col. (Rtdf Kiiza Besigye & Abed Lutale (Supraf counsel for the applicants had cited the case of Makhoha Samuel & 35 ors Vs, Uganda Criminal Application lo.o.24 of 2024 where the accused persons had been charged with terrorism and granted bail by the International Crimes Division, court stated as follows;

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"I am persuaded that on the scale of gravity, the charges against the applicants in this case attract the ultimate penalty of death and therefore are graver than the charges in the Makhoha case which attracts life imprisonment."

- 38. Similarly, as i already mentioned earlier, the offence of murder that the applicant in this case is charged with attracts the ultimate punishment of death and therefore impacts on the possibility of the applicant to abscond given the severity of the punishment involved.

Decieion

- 39. Having analysed the law, evidence and authorities on the subject of bail, I hereby deny the applicant bail for the following reasons;

- i) The sureties presented by the applicant are not substantial enough given the gravity of the offence charged.
- ii) The severity of the sentence that the offence charged attracts, is likely to be a factor for the applicant's abscondment in fear of the punishment.
- iii) No exceptional circumstances have been proved by the applicant to warrant his release on bail.
- iv) The applicant was already committed to the high court, therefore there is likely to be no substantial delay in his trial.
- 40. In the final result, I accordingly dismiss this application. The accused person's/ applicant's case shall be cause listed for hearing in one of the nearest convenient sessions.

It is so ordered

ilb Dated t) day of NY *,O" GOD AG. JUDGE

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