

UGANDA / JUDGMENT

Kasiiku & Another v Uganda (Criminal Application No. 21 & 23 of 2025) [2025] UGHACD 11 (22 April 2025)

[2025] UGHACD 11

COURT

HC: Anti corruption Division (Uganda)

BEFORE

Gidudu, J

CASE / FILE NUMBER

Criminal Application No. 21 & 23 of 2025

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA ANTI-CORRUPTION DIVISION AT KAMPALA

CRIMINAL MISC. APPLICATION 21 OF 2025

(ARISING FROM CRIMINAL CASE 13 OF 2025)

1. MARK KASIIKU APPLICANT

VRS

UGANDA RESPONDENT

AND

CRIMINAL MISC APPLICATION 23 OF 2025

(ARISING FROM CRIMINAL CASE 13 OF 2025)

2. Yawe Tony .. APPLICANT

VRS

UGANDA RESPONDENT

(CONSOLIDATED)**BEFORE GIDUDU, I RULING ON BAIL**

1. The two applicants are charged with 7 others in criminal case 13 of 2025 for various offences. Only these two are on remand. The others were released on bail. This is the second time they are applying for bail. Their earlier bail application was rejected because they had insufficient securities to stake for their bail and were the main suspects in the alleged crime. Others were brought on board because of the alleged action wo.
2. Mark Kasiiku, a Functional Support Officer/IT on contract in the MFP&ED, is charged with three counts as follows: -

Causing financial loss C/S 19 of the ACA, Cap 116 in count nine. He is accused of manipulating the payment instruction files in respect of USD 391,720.45 which was supposed to be paid to International Development Association to MJS International London, a company that was not entitled to the payment;

Electronic fraud C/S 18(1) of the Computer Misuse Act, Cap 96 in count ten. He is accused of using deception to intentionally secure an unlawful gain for MJS International London by deliberately introducing executable like scripts on the Oracle Programme on the IFMS system that resulted into unauthorized payment of USD 8,596,824.26 to the said MJS International London; and

Money Laundering C/S 3(b), 116, 136(a) of the AMLA, Cap 118 in count eleven. He is accused of intentionally concealing the true nature of the USD 6,134,137.75 that was fraudulently paid to Roadway Company Limited, Tokyo Japan by manipulating the payment system to falsely indicate that the payment was in fact made to International Development Association, whereas not.

3. Yawe Tony, a Senior Information Technology Officer in the MFP&ED, is charged with 6 counts as follows: -

Causing Financial Loss C/S 19 of the ACA, Cap 116 in count two. He is accused of manipulating the payment instruction files in respect of the payment of USD 6,134,137.75 which was supposed to be paid to International Development Association to Roadway Co Ltd purporting to be payment for recycling plant systems and machinery, having reason to believe that such act would cause financial loss of USD 6,134,137.75 to the GOU.

Corruption C/S 2(h) and 26(1) of the ACA, Cap 116 in count three. He is accused of irregularly altering the payment instructions for USD 6,134,137.75 that was supposed to be paid to

International Development Association

by substituting the payee with Roadway Co Ltd purporting to be payment for recycling plant and machinery for purposes of illicitly obtaining benefits from the said Roadway Co Ltd.

Abuse of Office C/S 10 of the ACA, Cap 116 in count five. He is accused abusing the authority of his office by doing an arbitrary act prejudicial to the interests of his employer when he irregularly altered the contents of payee instruction file for payment of USD 6,674,340.75 to International Development Association Washington to International Development Association Sielska 17A 60-129, Pozna, Poland.

Electronic Fraud C/S 18(1) of the Computer Misuse Act, Cap 96 in count six. He is accused of using deception with the intention of securing an unlawful gain, deliberately manipulated the payment instruction files on the IFMS by altering the payment details from International Development Association Washington the intended payee for USD 6,674,320.75 to an unintended payee in the names of International Development Association Sielska 17A 60-129, Pozna, Poland.

Corruption C/S \$2(h)\$ and \$26(1)\$ of the ACA, Cap 116 in count seven. He is accused of irregularly altering payment instructions for USD 6,674,320.75 that was supposed to be paid to International Development Association Washington as payment for principal interest by substituting the intended payee with International Development Association Sielska 17A 60-129, Pozna, Poland for purposes of illicitly obtaining benefits from the said International Development Association Sielska 17A 60-129, Pozna, Poland.

Money Laundering C/S 3(b), 116, 136(a) of the AMLA, Cap 118 in count eleven. He is accused with others of intentionally concealing the true nature of the USD \$6,134,137.75\$ that was fraudulently paid to Roadway Company Limited, Tokyo Japan by manipulating the payment system to falsely indicate that the payment in fact was made to International Development Association, whereas not.

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- 4. Flowing from my ruling of 3rd March 2025, where I declined to release the two on bail because they had insufficient securities to stake, their current applications are essentially based on two grounds each. That they have obtained valued securities supported by powers of attorney to be staked for their bail and have got additional sureties to guarantee their return for trial. The consolidated application turns on these two points: securities and sureties.
- Mark Kasiiku, aged 33, is a resident of Muyenga Kironde 5. Road, at his father's house found on property Kyadondo, Block 24 plot 3806. He has staked the following properties.
- Plot 3806 Kyadondo Block 244 land with a home at (i) City. Valued \$1,400,000,000=\$. Muyenga, kampala $\quad \text{at} \quad \quad$ Proprietor Dr. Kasiiku Elly Tibahika who is father of the applicant. Power of attorney to stake it as security is attached.
- Plot 1438 Kyadondo, Block 246, Kyeitabya, Kampala City. (ii) Proprietors Kasiiku Mathew Mwebaze and Kasiiku Marion who are siblings of the applicant. Valued at 800,000,000= . Power of attorney to stake it as security is attached.

- Plot 3617, Kyadondo Block 228 land at Mbalwa in Wakiso \$(iii)\$ district. Proprietor is the applicant. It is valued at \$150,000,000=\$.

He presented the following sureties: -

- Dr. Kasiika Elly Tibahika, 72, He is the father of the \$(i)\$ applicant. They stay at the same address. He is a dental surgeon.
- Mrs. Jackline Kasiika, 62, a consultant. She is the mother \$(ii)\$ of the applicant staying at the same address.
- Ms. Mulindwa Gertrude Kayaga, 69, a resident of Kansanga \$(iii)\$ Church village, Makindye Division. She is a retired director of the National Libraries of Uganda. She is aunt to the applicant.
- Dr. Keneth Kakuru Tomanya, 33, medical doctor at Uganda \$(iv)\$ Heart Institute, childhood friend of the applicant.

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\$(v)\$ Charity Bhatia Sange, 34, Regulatory Compliance Advisor at East African Crude Oil Pipeline. She is a resident of Kazinga Zone, kiwatule, Nakawa Division kampala. Childhood friend to applicant.

M/S Awelo Sarah and Asingwire Martin who represented Mark kasiiku submitted that the applicant deserves to be released on bail since he has a fixed place of abode, has sound sureties and has staked sufficient securities valued at \$2,350,000,000=\$ to guarantee his return to court for his trial.

The applicant averred that the allegations against him are false because the log-in was not from his IP address. He contends it was a third party that used his credentials. Besides out of USD 8,596,824.26 that was wired out, USD 8,205,103.79 was recovered leaving a lesser sum as outstanding which his staked property can cover.

- 6. Yawe Tony, aged 46 is a resident of Katale Busawula, Kikajjo Ward in Kyengera Town Council, Wakiso district staked the following property: -
- (i) Land with a title for block 376 plot 375 land at Katale Busiro which is his home. Proprietor is the applicant. It is valued at \$250,000,000=\$
- (ii) Land comprised in Kibuga Block 24 plot 467 at Lungujja jointly owned with his sister Nakasi Annet. It is valued at \$420,000,000=\$

(Land comprised in FRV WBU6474 FOLIO 1 PLOT 706 Block G 537 at Katale. It is jointly owned with Balikuddembe John Fisher, his elder brother. It is valued at \$168,000,000=\$

(Land comprised in Mawokota Block 244 Plot 30 at Namasawo, Mpigi district. It is jointly owned with his longtime friend Miwanda Ignatius. It is valued at \$85,000,000=\$

Powers of attorney from co-owners are attached. He presented the following sureties: -

Balikudembe John Fisher, 56, ICT Manager working with (i) UMI. He is a brother to the applicant. He is a resident of Kyaliwajjala "B" LC1, in Kira Municipality

- Barongo George Wmson, 60, a resident of Namugongo (ii) Bulooli Cell in Kyaliwajjala, Kira Municipality. He is a Finance and Administration manager, JHPIEGO UGANDA, plot 8 Circular Road, Ministers' Village Ntinda, Kampala. He is a maternal uncle.
- Sendawula Richard Phillip, 47, Managing Partner, FUSED (iii) DOTS- real estate company. Resident of Namugongo Bulooli Cell in Kyaliwajjala, Kira Municipality. Close friend.
- Nakachwa Angella Mercy, 38, wife of the applicant. She (iv) works at Specialised technical Services Ltd as Operations Manager.
- Miwanda Ignatius, 46, ED of Christian Family Helpers Ltd- (v) Muyenga. He is a friend and joint proprietor of at Mawokota vide block 244 plot 30.
- Ssegirinya Gerald, 61 (vi) years, resident (vii) Lutunda. Kanyanya, Kawempe, proprietor of Hotel J-Frigh Company Ltd. He is a friend of applicant.
- Bwanika Charles, 49, Station Manager at UBC, resident of (viii) Katale Busawula Kyengera Town Council, he is friend and neighbor to applicant.
- Kasolo Yahaya, 56, Assistant (ix) Commissioner Accounts, Ministry of Internal Affairs. He is friend to applicant. He is a resident (x) Bweyogerere Wellspring Zone, In Kira Municipality

Mr. Mukiibi David who represented Yawe Tony, submitted that the total value of the securities is \$923,000,000=\$ and that the sureties are substantial to guarantee his return to court.

- 7. M/S Terpista Nam and Innocent Alito from the ODPP opposed bail and asked court to dismiss the consolidated application on the following grounds: -
- **Gravity of the offence:** It was submitted that the offences (i) with which the applicants are charged are individually grave and cumulatively even more grave. The court was asked to treat the offences as a calculated, systematic betrayal of

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public trust when they fraudulently diverted USD 8,5 million earmarked for the repayment of sovereign debts to the African Development Bank and the International Development Association. The rest of the submission on this aspect sounded like what happens during allocutus after the prosecution has secured a conviction.

The use of jargons such as weaponized economic crimes and economic terrorism sounded as if the applicants are convicts who must be punished severely by remand when the trial has not commenced and no evidence has been led to prove the allegations.

With respect, I found the submissions at this stage rather alarmist. The applicants had not been convicted yet so insinuations about what they did must be understood to be allegations not proven facts.

Sophisticated, organized and transnational criminal \$(ii)\$ scheme: It was submitted that bail should be denied because this was a case of modern digital financial conspiracy sprawling across borders. The applicants were said to have exploited the system vulnerabilities to launch their attack and release on bail will undermine efforts of recovery of the stolen funds.

In this regard I was asked to follow the recent case of Col. (Rtd) Dr Kiiza Besiqve Vrs Uganda vide Misc. Application \$113/2025\$ where he was denied bail because the case was grave and investigations required going outside Uganda. The court was asked to deny the accused bail in "the interests of justice, public confidence and the rule of law"

- Clear and incriminating digital foot prints: It was \$(iii)\$ submitted that the digital foot prints used to commit the crime are "mkasiiku" and Tony Yawe which belong to the applicants. It was submitted that this evidence is so clear that to grant bail would amount to trivializing the crime.
- on-going investigations: \$(iv)\$ Danger to It \$was\$ the submission that investigations respondent's are \$\overline{\text{on}}\$ internationally where fugitives are yet to be arrested. That if

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are released, they will the applicants jeopardize investigations through their networks abroad.

- **Flight risk of applicant:** It was submitted that the \$(v)\$ applicants have connections which they will activate to flee than to wait for their trial and that they have resources to flee the country using any means. The rest of the submissions on this aspect were text book stuff.
- **Lack of exceptional circumstances:** It was submitted that \$(vi)\$ there were no credible or compelling reasons to release the applicants on bail. I was referred to a holding of this court in Misc. Applications 41,42 and 47 of 2024 Hon. Mutembuli and others Vrs Uganda where I held that "In economic crimes such as the current case, if colossal sums of money are stolen or lost or received and the state is making efforts to trace, identify and seize the same or the proceeds in form of laundered assets or property, it would compel a court to keep the accused on remand to reduce the risk of disposing of the proceed of crime. This would ensure that the offender does not destroy evidence or frustrate asset *recovery*". In this case since money was lost I was asked not to release them since they would cause the money to disappear.

- Public interest and integrity of the justice system: It was \$(vii)\$ submitted that "the notion that a person accused of such high stake fraud could be granted bail while investigations are on-going is a dangerous precedent that weakens public *confidence* in our system". It was contended that the applicants were capable of re-offending.

The rest of the submissions in objection were really unnecessary. They are matters of evidence which should have been made by affidavit instead of submissions from the bar. Objections to bail should be supported by evidence on oath and not submissions from the bar. The so called "publics" have no affidavit evidence to demonstrate how they would react if the applicants are released on bail.

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Be that as it may, three affidavits were sworn in objection to bail but were ignored by M/S Aleto and Terpista in their joint submissions. I will consider them since they comprise evidence on oath.

Mudaban Benon, a police officer, investigating the case in his two affidavits opposing bail conceded that out of the USD 8,596,824.26 wired to UK, the state recovered USD 8,205,163.81 leaving a balance of only USD 391,660.45. It follows that the loss caused by Mark Kassiku was substantially mitigated by the recovery contrary to the submissions of both counsel for the respondent who ignored this fact by their own witness. It also renders Amerit Timothy's affidavit to be false for it alleges that the whole figure is outstanding.

Mudaban Benon also attached documents which revealed that on 12th November, 2024, the police wrote to Financial Intelligence Authority to use its networks to obtain details of the accounts and holders in Japan where money was wired. There is no information if FIA responded to this request.

He also attached a letter by the police to INTERPOL of same date asking for the same information from Japan and UK. His affidavit is silent on any response from INTERPOL. Another letter by the police is to the PS Ministry of Foreign Affairs seeking a meeting with ambassadors of Japan, UK and Poland to help in investigations of funds wired to their respective countries. I don't know if there was a response to this rather strange request.

Without information on the response or lack of it from these agencies, it is not clear whether investigations have made any progress or not.

8. Consideration by court.

I have considered the submissions for both sides and perused their supporting annexures for and against the grant of bail.

An accused person has a Constitutional right to apply for bail and courts have the discretion to judicially consider the matter and make a decision to grant bail or not.

Among the considerations are those contained in sections 15 and 16 of the TIA, Cap 25. In addition, case law has guided courts on what to consider in a bail application.

Considerations for bail include whether the accused has a fixed place of abode; whether he/she has sound sureties within the jurisdiction of the court to undertake that the accused will comply with the conditions of his/her bail; whether the accused has ever defaulted on a previous bail; whether there are other charges pending; whether the gravity of the offence is high as to compel the accused to jump bail; whether the accused will interfere with investigations or witnesses if released on bail; whether the accused is likely to commit another crime if released on bail; the impact of detention on the prisoner and his/her dependents; the protection of society from lawlessness; the need to give an accused adequate time and facilities to prepare his/defence. See \$Art28(3)(c)\$ of the Constitution.

All the above considerations need not be present and are indeed not always present in every case. Each case presents its own circumstances and court has discretion to balance the scales of justice in favour of or against the grant of bail depending on the presence or absence of conditions required.

9. Do the two applicants merit release on bail or not.?

Each of the applicants has furnished securities and sureties to support their case for release on bail. They each have furnished evidence of their fixed places of abode.

The state has opposed their release on grounds that economic crimes such this should not be considered for release of the accused on bail because of its sophisticated nature and the global implications in that money was exited to foreign accounts and the

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inherent risk that they may re-offend or destroy evidence. Further, that the public interest requires that bail be denied in this matter.

This court has in a number of cases observed that corruption cases are grave because they deprive the citizens of service delivery especially where money is stolen from the National budget.

None of the nine accused in **criminal case number 13 of 2025** is charged with embezzlement or theft of this money. It is not clear at this stage who the beneficiary is. All the nine accused have denied the charges and enjoy the constitutional right to the presumption of innocence in Article 28(3)(a) of the Constitution.

I have held in an earlier application by the accused that fears such as re-offending are mitigated by the fact that users on IFMS is by access codes and passwords. The applicants who were charged in February, 2025 and remanded to-date must have been de-activated from IFMS and their functions must have been assigned to other officers. The applicants are actually on interdiction by virtue of their appearing in court on criminal charges affecting their offices. The fear that the applicants will access and transact on IFMS is unfounded.

The offences were alleged to have been committed in August to September 2024. The applicants were charged in February 2025. There is no evidence that investigations have busted the beneficiary of the money. The applicants are considered facilitators on the basis of the charges yet to be proved. They have been on remand for now close to three months. I have been asked to keep them there. The court has not been informed of how long it should keep them or how long investigations will take. It has been submitted that "the notion that a person accused of such high stake fraud could be granted bail while investigations are on-going is a dangerous precedent that weakens public confidence in our system". Further, it was submitted that "the interests of justice, public confidence and the rule of law".

In the view of counsel for the respondent, Rule of law and public confidence in the justice system is assured by the remand culture

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of criminal suspects by courts. I understand the submissions to mean that releasing criminal suspects on bail undermines the rule of law and lowers public confidence in the justice system. In other words, Justice is equal to the denial of bail.

With respect, I am unable to follow that reasoning. It offends constitutionalism which is the bedrock of the rule of law. Public confidence is enhanced if courts follow the law and not any other consideration. The presumption of innocence enshrined in Article 28(3)(a) of the Constitution protects a criminal suspect from being condemned to remand unless factors for his/her release are absent.

Secondly the protection of liberty under Article 23(1)(a)-(h) of the **Constitution** does not allow the detention of accused persons just to allow investigations. Ideally, a person should be arrested after investigations but because of the risk of fleeing or destroying evidence, sometimes it is necessary to arrest and restrict the accused for a limited time for purposes of bring the person to court. Once in court, reasons must exist to remand the person. That is the rule of law.

"Remanding a person in custody is a judicial act and as such the court should summon its judicial mind to bear on the matter before depriving the applicants of their liberty....the court should consider all other relevant circumstances". See Uganda Vrs Col (Rtd) Dr. Kiiza Besigye Constitutional Petition 20 of 2005.

I was also asked to send back on remand the applicants because they have not posted exceptional circumstances. The Constitutional Court has held in cases such as Constitutional Reference 20 of 2005 Uganda Vrs Col Dr. Kiiza Besigye and Constitutional Petition 20 of 2006 FHRI Vrs AG, that Section 15 of the TIA is regulatory. It is not mandatory terms nor does it remove the discretionary powers of the High Court to grant bail.

The plain meaning of §15(1) TIA is that the court may refuse to grant bail to an accused unless he/she proves "exceptional" circumstances". It is within the discretion of the court to refuse bail and for lack of exceptional circumstances. But the provision does

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not take away the discretion of the court to grant bail without the requirement for exceptional circumstances. In other words, it is not mandatory to prove "exceptional circumstances" in every case unless the court so requires of the applicant.

Finally, there were issues such as the applicants being a flight risk and jeopardizing investigations. There was no credible evidence from either the affidavit of the investigating officer or a potential witness who had been improperly approached to justify this fear. These were submissions from the bar.

Keeping a prisoner on remand does not itself effectively prevent a prisoner from interfering with witnesses. Through prison visits, a prisoner on remand can still improperly influence witnesses. What is required is evidence from potential witnesses that they have been approached improperly otherwise the sky would be the limit if speculation about interference is not taken with caution. See cases of Panju Vrs Republic (1973) 1 E. A 282; Jaffer Vrs Republic (1973) 1 E. A 39.

I should point out that seven of the co-accused are out on bail and none of them has escaped or interfered with witnesses or destroyed evidence. None of them is reported to have jumped bail. If such evidence is brought to the attention of court, bail would be cancelled. These particular applicants were denied bail originally because they were the active facilitators according to the allegations. They did not have sufficient securities to assure court of their obedience of court attendance. Like the rest, they are not accused of stealing or receiving the money. Investigations are yet to reveal who caused this to happen.

This court has in previous cases such as **Uganda Vrs Jimmy Lwamafa and 2 Others**, criminal case 9 of 2015 and **Uganda Vrs Asiimwe Annah** criminal case 130 of 2024 declined to grant the accused bail in corruption cases because the accused could not furnish sufficient securities and sound sureties. This demonstrates that court would not release a person accused of an economic crime on bail unless sufficient quarantees are furnished.

I would like to commend both counsel for the respondent for their depth in their written submissions but hasten to add that they were full of fears from the bar. They were not supported by affidavit evidence common in such applications so as to persuade court.

Whilst the charges are grave because of the sentence of 15 years especially on charges of money laundering, this can be assured by ensuring that the applicants stake sensitive securities which include homes and have a sizable number of sureties who would execute bonds to assure court that the accused will report to court rather than flee to the nearest border.

Consequently, I allow the application and make the following orders.

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- Yawe Tony shall deposit the following property as security for bail.

- Research copy · Verify against the source

- Land comprised in Kibuga Block 24 plot 467 at Lunguja \$(ii)\$ jointly owned with his sister Nakasi Annet. It is valued at \$420,000,000=\$
- Land comprised in FRV WBU6474 FOLIO 1 PLOT 706 (iii) Block G 537 at Katale. It is jointly owned with Balikuddembe John Fisher, his elder brother. It is valued at \$168,000,000=\$
- Land comprised in Mawokota Block 244 Plot 30 at \$(iv)\$ Namasawo, Mpigi district. It is jointly owned with his longtime friend Miwanda Ignatius. It is valued at \$85,000,000=\$
- 3. Each applicant shall deposit his passport in court
- 4. Each applicant is prevented from going to office except with permission of PS/ST
- 5. Each surety for each applicant shall execute a bond of 500 million (not cash).

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- 6. Each person released on bail shall report to the Registrar of this court once every month starting 22nd May 2025. After that the Registrar will harmonize their reporting to tally with the other seven already on bail.
- 7. If any applicant fails to meet the terms set by court, he shall be remanded to appear before the magistrate for mention of their case as directed by the Chief magistrate on their next reporting date.

Gidudu Lawrence

Judge 22nd April, 2025

ORDER

The Assistant Registrar is directed to deliver this ruling on my behalf since I was transferred before I could complete this highly protracted application.

Gidudu Lawrence Judge 22nd April, 2025

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