

UGANDA / JUDGMENT

Kato v Uganda (Criminal Miscellaneous Application 401 of 2024) [2025] UGHCCRD 10 (17 February 2025) [2025] UGHCCRD 10

COURT

HC: Criminal Division (Uganda)

BEFORE

Gadenya, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 401 of 2024

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⁵ THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT
KAMPALA (CRIMINAL DIVISION) CRIMINAL MISC. APPLICATION NO. 401 OF 2024
(ARISING FROM THE CHIEF MAGISTRATE'S COURT OF NAKAWA CRIMINAL CASE
NO. 24 OF 2024)

KATO. IORAM APPI, ICAN't vl:, ttsUS

U(ANI)A RESP(NI)I]NT

RULING

BF'F'ORF' JUSTICE (JAITT'NYA PAUL WOLIMBWA

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to do so.

This Application for Bail Pending Trial was brought under Article 23 (6) of the Constitution; Section 14 of the Trial on Indictment Act Cap 23; and, Rule 2 of the Judicature (Criminal Procedure) (Applications) Rules S.I. 13. The grounds of the Application as contained in the Notice of Motion and its Supporting Affidavit are that: 20

- 1. The offences the Applicant is charged with are bailable by this Honourable Court.
- 2. It is the Applicant's constitutional right to apply for bail.
- 3. The Applicant is presumed innocent until proved guilty or until he pleads guilty.
- 4. The Applicant has a fixed place of abode within the jurisdiction of this Honorable Court.

- 5. The Applicant has not absconded bail before, and does not intend to do so if released.
- 6. The Applicant has substantial sureties who are each ready and willing to execute a bond to ensure that he complies with the bail terms, including attending Court as and when required
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- 7. It is in the interest of justice that the Application is allowed

The respondent opposed the application on grounds that the applicant is likely to abscond and when he does, it will be difficult to trace him for trial.

conditions for bail, which allows Judicial Officers to consider the specifics of each case, including flight risk, potential harm to victims, or interference with witnesses. This discretion helps balance individual rights with public safety concerns.

- 10 3. Encouragement of Fairness: By allowing bail applications, this provision promotes fairness in the judicial process. It acknowledges that being charged with an offence does not equate to guilt and provides an opportunity for individuals to maintain their freedom while awaiting trial.
- 75 Summarily, Article 23 (6) (a) is significant because it allows accused persons to remain free while awaiting trial, acknowledges the presumption of innocence, and reinforces the principle that liberty should not be curtailed unnecessarily.

Section 15 (1) [formally section 14(1)] of the Trial on Indictment Act 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 recognizance consisting of a bond, with or without sureties, for such sum 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."

This section empowers the High Court to grant bail at any stage during proceedings, which has several implications, encompassing:

- Flexibility in Legal Proceedings: The ability for the High Court to release an accused person on bail at any point reflects an understanding that circumstances can change throughout legal proceedings. This flexibility can accommodate new evidence or changes in risk assessments regarding flight or danger.
- 2. Recognizance Bonds: The requirement for recognizance bonds means that individuals can secure their release by committing financially to appear in court. This mechanism serves as both a deterrent against non-appearance and a means of ensuring accountability. 95

The applicant argued that he will not abscond if released on bail because he has a fixed place of abode known to court and sureties who are prepared to execute a bond and ensure that he complies with the set bail terms.

In considering whether an applicant will abscond if granted bail, Section 16 (4) [formally section 15(4)] of the Trial on Indictment Act enjoins court to consider the following factors:

"(a) Whether the accused has a fixed abode within the jurisdiction of the court or is ordinarily resident outside Uganda,"

135 (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 of his or her bail: and,

(d) Whether there are other charges pending against the accused. "

140 This is further emphasized by Guideline 13 (1) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022, which provides an extensive list of factors court should take into consideration when handling a bail application. Guideline 13 (1) of the said Guidelines provide as follows:

"A court shall consider the following in handling a bail application

- 745 a) Gravity of the offence;
- b) Nature of the offence;
- c) The antecedents of the applicant so far as they are known;
- d) The possibility of a substantial delay of the trial;
- e) The applicant's age, physical and mental condition;
- 150 J) The likelihood of the applicant to attend court
- c) The stage of the proceedings;
- h) The likelihood of the applicant to commit an offence while on bail,
- i) The likelihood of the applicant interfering with witnesses
- i) The safety of the applicant, the community, and the complainants:
- k) Whether the applicant has a fixed place of abode...; 155

185 So, even though the Applicant has provided documentation in court showing his address in terms of village, Parish and District, he neglected to provide any identification documentation for court to ascertain his identity. This makes it difficult for court to identify the applicant and satisfy itself as to the correctness of the person they are dealing with.

190 ii. Substantial Sureties

Guideline 15 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 provides that:

"(1). When considering the suitability of a surety, court shall take into account the following factors-

195 a) The age of the surety:

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- 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.

200 (2) Subject to sub paragraph (1), the proposed surety shall provide documentary proof including;

- a) a copy of his/her national identity card, passport or aliens identification;
- b) an introductory letter from the local council chairperson of the area where the surety is ordinarily resident;
- c) Asylum seeker or refugee registration documents issued by the Office of the Prime Minister. "

The aforementioned Guideline assists the court in evaluating the appropriateness of sureties provided by an applicant.

The applicant asserts on record that he possesses significant sureties willing to act as guarantors and ensure his appearance for trial. At paragraph 10 of his Affidavit in support, the Applicant presented five sureties as follows:

- 1. Mr. Buzibye George Biological Father.
- 2. Mrs. Nabiryo Oliva Biological Mother.

Ms. Apolot Joy Christine, Senior State Attorney for the Respondent Applicant present Mr. Kagwa Court Clerk The ruling is read.

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Gadenya Paul Wolimbwa JUDGE.

255 17th February 2025

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