

UGANDA / JUDGMENT

Kato v Uganda (Criminal Miscellaneous Application 401 of 2024) [2025] UGHCCRD 8 (25 February 2025) [2025] UGHCCRD 8

COURT

HC: Criminal Division (Uganda)

BEFORE

Gadenya, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 401 of 2024

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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 MAGISTRATES COURT OF NAKAWA CRIMINAL CASE NO. 24 OF 2024)

KATO JORAM APPLICANT

VERSUS

UGANDA RESPONDENT

RULING

BEFORE JUSTICE GADENYA PAUL WOLIMBWA

1. Introduction

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:

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 to do so.
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.

1. Representation

The applicant was represented by the firm of M/s Ssemengo & Co. Advocates whereas the complainant was represented by Ms. Apollot Christine, a Senior State Attorney from the Office of the Director of Public Prosecutions.

1. Issue for Determination

Whether the applicant should be released on Bail Pending Trial?

1. Determination of the Application

4.0.1. The Law on Bail

1. Discretion

The essence of bail is merely to release the accused person from physical custody but he/she is still under the jurisdiction of the law and is bound to appear at the appointed time and place. The discretionary power of the court to grant bail is provided for under Article 23 (6) (a) of the Constitution, Section 15 (1) [formally Section 14(1)] of the Trial on Indictment Act, and; Article 28 (3) (a) of the Constitution. For ease of reference these laws are reproduced below:

Article 23 (6) (a) of the Constitution provides that-

“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.”

The provision details the rights of individuals to apply for bail following their arrest and is significant for several reasons, inclusive of:

1. **Protection of Accused Persons Against Unlawful Detention:** This Article ensures that individuals are not held indefinitely without trial. Furthermore, it embodies the principle that pre-trial detention should not be punitive but rather a measure to ensure that the accused appears in court.

2. **Judicial Discretion:** The law under this Article grants courts the authority to set reasonable 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.
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.

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 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.”

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

1. **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.

Article 28 (3) (a) of the Constitution provides that:

“(1) Every person who is charged with a criminal offence shall—

1. *be presumed to be innocent until proved guilty or until that person has pleaded guilty;”*

This Article establishes the Presumption of Innocence Principle where an individual charged with a criminal offense is considered innocent until proven guilty. Such a foundational concept is vital in safeguarding the rights of the accused and ensuring that the burden of proof lies with the prosecution. It also helps to prevent wrongful convictions and underscores the commitment to fair trials.

In general, therefore, all the provisions cited above, are intended to safeguard both the right to personal liberty of an accused person which should not be taken lightly and/or arbitrarily deprived; and, the right to a secure environment by the community.

1. Conditions for Release on Bail

The conditions under which Court can grant bail are spelt out in Section 16 [formally Section 15] of the Trial on Indictment Act, which include proof of exceptional circumstances if any and presenting sufficient guarantees that the accused will not abscond such as having substantial sureties and a fixed place of abode. According to Section 16 (3) [formally Section 15 (3)] of the Trial on Indictment Act, exceptional circumstances include grave illness; presentation of a Certificate of no objection from the Director of Public Prosecutions; and infancy or advanced age.

Firstly, it should however be noted that proof of exceptional circumstances is not mandatory in view of Article 23(6) of the Constitution which gives court discretion to either grant or deny bail. Secondly, proof of exceptional circumstances is not a blank cheque that the accused will be released on bail. Bail can be denied if there are circumstances that show that the accused person might abscond or that it is not in the interest of justice to release the accused person on bail.

4.0.2. The Application

Issue: Whether the applicant will abscond if granted bail.

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;

(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.”

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 considering 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.**

1. *Gravity of the offence;*
2. *Nature of the offence;*
3. *The antecedents of the applicant so far as they are known;*
4. *The possibility of a substantial delay of the trial;*
5. *The applicants age, physical and mental condition;*
6. *The likelihood of the applicant to attend court*
7. *The stage of the proceedings;*
8. *The likelihood of the applicant to commit an offence while on bail;*
9. *The likelihood of the applicant interfering with witnesses*
10. *The safety of the applicant, the community, and the complainants;*
11. *Whether the applicant has a fixed place of abode...;*
12. *Whether the applicant has sufficient sureties...;*
13. *Whether the applicant has on a previous occasion when released on bail, failed to comply with his/her bail terms.*
14. *Whether there are any other charges against the applicant; or*
15. *Whether the offence for which the applicant is charged involved violence.”*

The comprehensive interpretation of the aforementioned provisions indicates that, in order to be granted bail pending trial on the basis of not absconding, the court must assess whether the applicant has a stable residence to ensure traceability. Additionally, the court must evaluate the adequacy of the sureties provided, ensuring they are substantial enough to be traceable, capable of supervising the applicant, and able to cover the bail bond in the event of the applicant's absconding.

1. Fixed Place of Abode

In **Mugenyi Steven Vs Uganda, Miscellaneous application No.6 of 2004**, court held that, “*the onus is on the applicant to satisfy that he has a permanent place of abode in a particular known village, sub-county county, and district, to enable court exercise jurisdiction over the applicant while on bail being able to trace his whereabouts whenever it is necessary.”*

Turning to the matter at hand, the applicant deponed that he has a fixed place of abode at Kireku – Railway Cell, Bwoyogerere Ward, Bweyogerere Division, Kira Municipality, Wakiso District. Attached to his bail Application is a recommendation letter from the area LC1 Chairperson showing the applicants’ village, Parish and District. By virtue of this, court finds that the Applicant has a fixed place of abode.

Be that as it may, Court observes that the Applicant does not attach a copy of his National Identity Card or any other recognized identification documentation to his application or at least his submissions. Firstly, without identification, there's uncertainty about who the person actually is. Verification of the Applicants' identity becomes hard for Court to do. They could be using a false name, have a more extensive criminal record than revealed, or be a greater danger to the community than initially assessed. Secondly, lack of identification on the Applicants part significantly increases the risk that he will flee and not appear in court. And thirdly, if released without presenting proper Identification Documentation, it would become harder for court to supervise the applicant in terms of tracking and ensuring he remains within jurisdiction.

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.

1. 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-”

1. *The age of the surety;*
2. *Work and residence address of the surety;*
3. *Character and antecedents of the surety;*
4. *Relationship to the accused person; and*
5. *Any other factor as the court may deem fit.*

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

1. *a copy of his/her national identity card, passport or aliens identification;*
2. *an introductory letter from the local council chairperson of the area where the surety is ordinarily resident;*
3. *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.
3. **Ms. Babirye Moureen** – Twin Sister.
4. **Ms. Nanyonga Moureen**, - Biological Sister.
5. **Mr. Mpata Ronald Isiko**, - Friend.

Each of these sureties presented letters of introduction from their respective L. C.1 chairpersons and a copy of their National Identity Cards. The applicant in his application describes his relationship to each surety. The relationship description has shed light on the potential influence the surety's have over the applicant. As biological parents, biological sisters inclusive of a Twin sister, and a close friend to the Applicant, court is persuaded that the Five proposed sureties will respectively influence and persuade the applicant to abide by court orders because of their familial and social ties to him. Additionally, the Applicant sufficiently disclosed the Social Economic standing of each of his sureties. This information was of help to court in assessing the sureties' abilities to pay the bail bond sum in case the applicant absconds. For these reason, the proposed sureties presented by the applicant are considered substantial.

*** 1. Decision**

Much as the Applicant demonstrated that he has a fixed place of Abode and presented substantial Sureties, in the interest of justice, he is denied bail on this occasion because he neglected to provide any identification documentation for court to ascertain his identity and satisfy itself as to the correctness of the person they are dealing with.

The Application is dismissed.

It is so ordered.

Gadenya Paul Wolimbwa

JUDGE.

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