

UGANDA / JUDGMENT

# Komakech v Uganda (Miscellaneous Application 29 of 2024) [2024]

## UGHCCRD 35 (16 April 2024)

[2024] UGHCCRD 35

## COURT

HC: Criminal Division (Uganda)

## BEFORE

Muwata, J

## CASE / FILE NUMBER

Miscellaneous Application 29 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL DIVISION

MISC. APPLICATION NO.29 OF 2024

ARISING FROM THE CHIEF MAGISTRATES COURT OF ENTEBBE AT ENTEBBE CRIMINAL CASE NO.536 &amp;746 OF 2022.

KOMAKECH ROBERT -----APPLICANT

VERSUS

UGANDA-----RESPONDENT

## RULING

BEFORE HON: JUSTICE ISAAC MUWATA

The applicant seeks to be released on bail pursuant to Article 23(6)(a),28(3)(b) of the constitution, section 14 of the TIA, Section 33 of the Judicature Act and Rule 2 of the Judicature (Criminal Procedure) Application Rules.

The grounds of his application are mainly that on the 16th day of November 2022, the applicants were arrested, charged and arraigned before the Chief Magistrates Court of Entebbe on charges of malicious damage to property contrary to section 335(1) of the Penal Code and subsequently remanded.

That he has been on remand since 16th November ,2022 on charges of malicious damage to property. The applicant also stated that he was committed for trial on the 8th day of September,2023 and there is a real likelihood of substantial delay in hearing his case.

The applicant also stated that they have a fixed place of abode and that they have substantial sureties. In addition, the applicant stated that he still enjoys the presumption of innocence and will not abscond if granted bail.

He prayed that court exercises its discretionary power while taking into account his right to personal liberty.

In reply, the prosecution did not specifically object to the application for bail, rather he prayed that should the court grant the application, then it should impose appropriate conditions to compel his return to answer the charges preferred against him.

### Consideration

The constitution guarantees the right to apply for bail for persons who have been charged with a criminal offence, regardless of whether one has been committed for trial or not. **See: Article 23(6) (a) of the Constitution.**

The basis of this right is anchored on the principle of presumption of innocence enshrined in Article 28(3) (a) of the Constitution that an accused person is presumed innocent until proven guilty. However, it should be noted that the grant of bail is not automatic. **See: DPP Vs. Col. Kiiza Besigye. Constitutional Court Reference No.20 of 2005.**

The main consideration while considering an application for bail by the court is whether the applicant will not abscond if granted bail.

The applicant contends that he has spent over a year on remand having been remanded on the 16th November 2022 and that there is a real likelihood of delay in hearing his case.

Article 23(6)(b) of the constitution and Rule 9 of the constitution (bail guidelines for courts of judicature) (practice) directions, 2022 provides for Mandatory bail for offences triable by High Court and Magistrates Courts. It provides that;

**Where an offence is triable by the High Court as well as by a subordinate Court, if a person has been remanded in custody in respect of that offence for 60 days and trial has not commenced, that person shall be released on bail on such conditions as the court considers reasonable.**

In the instant application, the applicant stated that he was remanded on the 16th November 2022, this fact was not contested by the respondent. From 16th November 2023, the trial of the applicant has not commenced and more than 60days have lapsed without the trial commencing.

Once a person has been remanded in custody in respect of an offence triable by the High Court as well as a subordinate court for 60 days and trial has not commenced, the court is obliged to release the person on bail on such conditions as the court considers reasonable. The above

section makes it mandatory to release such a person on bail, the court only determines the conditions it considers reasonable in the circumstances. I take note that the applicant has already been committed to the High Court for trial but at the time he was committed the 60days had also lapsed.

Accordingly, the applicant is granted bail on the following terms

**He shall deposit a cash bail of shs. 1,000,000/=**

**Each of the sureties presented in court shall execute a non-cash bond of shs. 5,000,000/= not cash**

**The applicant shall report to the Deputy Registrar of this court every last Monday of the Month beginning 29th April ,2024**

I so order

**JUDGE**

**16/04/2024**

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