

UGANDA / JUDGMENT

Masaba v Uganda (Criminal Misc. Application No. 0038 of 2016) [2016] UGHCCRD 136 (12 October 2016) [2016] UGHCCRD 136

COURT

HC: Criminal Division (Uganda)

BEFORE

Luswata, J

CASE / FILE NUMBER

Criminal Misc. Application No. 0038 of 2016

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CRIMINAL MISC. APPLICATION NO. 0038 OF 2016

MASABA GEOFFREY..... APPLICANT

VERSUS

UGANDA.....RESPONDENT

RULING

BEFORE: HON. LADY JUSTICE EVA K. LUSWATA

The applicant presented this application under **Article 23[6][a] and 28[1] of the Constitution of the Republic of Uganda 1995 and Section 17[1] and 15 of the Trial on Indictment Act [TIA]**, for an order to be released on bail pending his trial. Briefly the grounds on relied are as follows:-

- [1] The applicant is charged with aggravated defilement an offence bailable by this Court.
- [2] The applicant is a family man and sole bread winner of his family with a permanent place of abode at Balawoli Village, Balawoli Sub County in Kamuli District and has two sureties to present to Court.
- [3] The applicant has a constitutional right to apply for bail pending trial and will abide by terms set for his release on bail.
- [4] It is in the interests of justice and fairness the orders sought are necessary.

The above grounds were substantiated in the applicant's two affidavits in support of the application and the respondent filed no affidavit in reply thereto.

Counsel Asimwe for the applicant substantially adopted the contents of the motion and affidavits in support. In addition, he submitted that the applicant had remained on remand for one year and three months after committal, and five years in custody before that. That the applicant's family continues to suffer in his absence, since he was the sole bread earner and pledged the attendance of his client whenever called upon by the Court.

He then introduced two sureties in support of the application. Their details are as follows:-

- [1] **KALULU GODFREY**, aged 21 years biological younger brother of applicant resident of Bogobi village, Bulawoli Parish, Bulawoli Sub County, Bugabula County in the Kamuli District and holder of National ID No. 007141767 and Cell No. 0704316294
- [2] **BWAMIKI MOSES**, aged 45 years, maternal uncle of applicant, LCI Secretary of Bogobi village, Bulawoli Parish, Bulawoli Sub County, Bugabula County in the Kamuli District, and holder of National ID No. 01736905 and Cell No. 0751930370

Ms. Nalule responded by opposing the application on two grounds

- [1] The offence is of a capital nature and the applicant was likely to abscond from the jurisdiction of the Court out of fear of a harsh sentence
- [2] The 1st surety being a younger brother of the applicant, will not be able to compel him to return for trial

She then submitted that although the prosecution is not in control of the session cause lists, they are ready to prosecute the case as soon as it is cause listed, but that if bail is granted, then stringent terms were appropriate for the circumstances of the case. Counsel Asimwe rejoined that the applicant being innocent should be of paramount consideration and by giving an address and presenting sound sureties, he has satisfied the two important considerations for bail to be granted. That the age difference between the applicant and Surety No. 1, was only one year and the latter being mature, would compel the applicant to appear in Court whenever called upon.

The right to bail is guaranteed under Article 23[6][a] of the Constitution and counsel Asimwe's submissions that the principle of the applicant's innocence at this point in the proceedings is correct. I would add that the primary purpose of bail should be to ensure that the applicant appears to stand trial without the necessity of being detained in custody during the period of trial. See for example Col. [Rtd] Dr. Kizza Besigye Vrs. Uganda – Criminal Application No. 83/2016.

The right to bail is generally provided for under Section 14 and 15 of the Trial on Indictments Act and in all instances, the power to grant or refuse bail is at the discretion of the Court. Of main concern to the court in all applications and not least the one before me, is that the accused will

not abscond when released on bail. It is important therefore that the applicant confirms his fixed place of abode and presents sound sureties who will ensure his attendance in court, and who can be called upon in the event he absconds. The requirement for and duties of sureties cannot be underestimated, for they are seen by court as the members of the public who will police the applicant in his area of residence and ensure his attendance for the trial. They therefore must be persons of integrity, mature and have close geographical and where possible blood proximity to the applicant.

A few questions put to the sureties presented showed that are neither mature enough nor persons of integrity on whom the important duties of a surety can be entrusted. Surety No1 is a younger brother of the applicant not yet with a full family. Even his youthful appearance did not impress me as one who would be able to have the moral or compelling authority to ensure the applicant's attendance to Court. As I will show later, he actually turned out to be a liar.

Surety No. 2 was presented as an LC I Secretary of Bugobi Village, Bulawoli Sub County in Kamuli District. However, the letter introducing him by the Chairperson of the same place, made no mention of this important information. Worse still, it was claimed by both the applicant and Surety No. 1, that he was their maternal uncle. Surety No. 2 himself denied that fact stating that him and the accused were merely friends of long. Although he knew the applicant's mother as one Nabirye Yunus, he denied knowledge of her parents and stated that she was merely his friend in the village. I am inclined to believe him on that point and sadly it would mean that both the applicant and Surety No.1 perjured Court when they introduced him as their maternal uncle. I cannot permit such a person to stand surety and there being false statements with regard to such an important fact of this application, it cannot stand. I will thereby make no consideration of any other grounds presented for the applicant.

I thereby decline to grant the application which is dismissed

I so order.

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EVA K. LUSWATA

JUDGE

12/10/16

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