

UGANDA / JUDGMENT

Masaba v Uganda (Criminal Miscellaneous Application 378 of 2024) [2024] UGHCCRD 67 (4 November 2024) [2024] UGHCCRD 67

COURT

HC: Criminal Division (Uganda)

BEFORE

Gadenya, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 378 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CRIMINAL DIVISION)

CRIMINAL MISC. APPLICATION NO. 378 OF 2024

(ARISING FROM THE CHIEF MAGISTRATES COURT OF BUGANDA ROAD AT CITY HALL
CRIMINAL CASE NO. 015/2024)

MASABA ALEX APPLICANT

VERSUS

UGANDA RESPONDENT

RULING

BEFORE JUSTICE GADENYA PAUL WOLIMBWA

1. Introduction

This re- application for Bail Pending Trial was brought under Article 23 (6) (a) & 28 (3) (a) of the Constitution, as amended, and Section 14 (1) & 15 (4) of the Trial on Indictment Act Cap 23; The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022; and, Rules 2 & 4 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 Applicant was indicted for the offence of Aggravated Defilement contrary to section 116(3) (4) (a) of the Penal Code Act, in which the offence is only bailable by the High Court;
2. The Applicant has been on remand from March 2024 to date.
3. The Applicant was committed to the High Court for Trial on 10 July 2024, but it is uncertain when the Trial will commence.
4. It is the Applicant's constitutional right to apply for bail and be released at the discretion of the Court.
5. The Applicant's fixed abode is Kisenyi II Zone, Kamwokya II Parish, Kampala Central Division.
6. The Applicant has five substantial sureties prepared to guarantee his return for trial when released on bail.
7. The Applicant has not pleaded guilty to the Offense of Aggravated Defilement and is still presumed innocent until proven guilty or pleads guilty.

In reply, the respondent preferred no objection to the bail application.

1. Representation

The firm of M/s Stabit Advocates represented the applicant, whereas Ms Apolot Christine, a Senior State Attorney from the Office of the Director of Public Prosecutions, represented the complainant.

1. Issue for Determination

Should the applicant 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 14 (1) [currently Section 15(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:** This provision promotes fairness in the judicial process by allowing bail applications. It acknowledges that being charged with an offence does not equate to guilt and will enable individuals to maintain their freedom while awaiting trial.

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 14 (1) [currently section 15(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 recognisance 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 High Court's ability to release an accused person on bail at any point reflects its understanding that circumstances can change throughout legal proceedings. This flexibility can accommodate new evidence or changes in risk assessments regarding flight or danger.
2. **Recognisance Bonds:** The requirement for recognisance 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, Which States that an individual charged with a criminal offence is considered innocent until proven guilty. This foundational concept is vital in safeguarding the rights of the accused and ensuring that the prosecution has the burden of proof. It also helps prevent wrongful convictions and underscores the commitment to fair trials.

In general, all the provisions cited above are intended to safeguard 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 the Court can grant bail are spelt out in Section 15 [currently Section 16] of the Trial on Indictment Act, which includes 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 15 (3) [currently Section 16(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.

First, it should be noted that proof of exceptional circumstances is not mandatory, given Article 23(6) of the Constitution, which provides the court with the discretion to either grant or deny bail. Second, proof of exceptional circumstances is not a blank cheque that the accused will be released on bail. Bail can be denied if circumstances show that the accused might abscond or that it is not in the interest of justice to release the accused on bail.

5.0.2. The Application

The applicant's case for bail is pitched mainly on Three (3) grounds, i.e. he shall not abscond, he has a permanent place of abode, and he has substantial sureties. In analysing whether the applicant should be granted bail, these three main grounds advanced by the applicant shall be merged into a single ground, i.e. Whether the applicant will abscond when granted bail, and analysed.

The Merged Ground: Will the Applicant abscond if granted bail?

The applicant argued that he would not abscond if released on bail because he has a fixed place of abode known to the court and sureties prepared to secure and guarantee his return to court when required.

In considering whether an applicant will abscond if granted bail, Section 15 [currently section 16] of the Trial on Indictment Act enjoins the 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 emphasised by Guideline 13 (1) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022, which provides an extensive list of factors the 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.**

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 provisions above indicates that, to grant bail pending trial based on the applicant's 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 the instant case, the applicant deponed that he has a fixed place of abode at Kisenyi Zone, Kamwokya II Parish in Kampala Central Division. He has submitted a copy of his National Identity Card, a recommendation letter from the area LC. 1 Chairperson, and a Tenancy Agreement as part of his application. The area LC. 1 introduces the Applicant as Masaba Alex, a Pastor at New Covenant Church founded in Kisenyi Zone, Kamwokya II Parish in Kampala Central Division, owner of the Kibanja for the Church, and a businessman. The Tenancy Agreement shows that the Applicant is a tenant of Mr Lubowa at Kisenyi Zone, Kamwokya II Parish in Kampala Central Division from 18th February 2023.

In **Mugenyi Steven Vs Uganda, Miscellaneous application No.6 of 2004**, the 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.”*

In **Aganyira Albert V Uganda, HCMA 0071 OF 2013**, Justice Alvidza observed, “*Local Council Officials are usually among the most important and/or respected members of the community, and their evidence of a fact should be considered credible. The evidence of a letter from the Local Council Confirming the fact that the applicant has a fixed place of abode within the jurisdiction would be of a higher evidential value if it had been endorsed by at least another member of the LC ... This would remove the danger of court speculating that the chairperson as an individual knows every human being who resides in his area on a day to day basis. Evidence of the exact location of the applicant, how long he has resided in the area, whether he is a permanent resident or renting premises, and the landlord's names would have added value*.”
(Emphasis mine)

The responsibility to demonstrate that an applicant possesses a fixed place of residence rests solely with the applicant, a duty that has been effectively fulfilled in this case. The court is aware of the applicant's addresses, including the village, parish, and City. Furthermore, the landlord's identity and the length of time the applicant has resided at the location are also established. This information facilitates the court's ability to ascertain the applicant's location.

In light of this, the Court finds that the applicant has a fixed place of abode.

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, the 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 Guideline above assists the court in evaluating the appropriateness of sureties provided by an applicant. The applicant asserts on record that he possesses significant sureties and is willing to act as a guarantor and ensure his appearance for trial.

In paragraph 5 of his Affidavit in support, the Applicant presented five sureties as follows:

1. **Timbiti John David**, 83 years old, a retired Army Officer who served in the Uganda Peoples Defence Forces for 20 years, a permanent resident of Buwere Local Council One; Namisindwa Ward; Namisindwa Town Council; Namisidwa County in Namisindwa District, and a biological father to the Applicant.
2. **Mutonyi Margret**, 70 years old, a permanent resident of Buwere Local Council One; Namisindwa Ward; Namisindwa Town Council; Namisidwa County in Namisindwa District, and a biological Mother to the Applicant.
3. **Napwoli Sam**, 78 years old, a Peasant, a permanent resident of Sikundu Cell; Namisindwa Ward, Namisindwa Town Council, Namisidwa County in Namisindwa District, and an Uncle to the Applicant.
4. **Amina Magona Mohamed**, 46 years old, a businesswoman dealing in General Trading, a resident of St. Augustine Urban Council One; Nsambya Central Parish; Makindye Division; Kampala City, and a Sister in Law to the Applicant.
5. **Buyela Moses Bosco**, 64 years old, a Peasant, a permanent resident of Nango Cell, Kolan Ward, Busiu Town Council, Mbale District, and a brother-in-law to the Applicant.

As noted from the record, the proposed sureties are all described as family members, i.e., the father, mother, uncle, sister-in-law, and brother-in-law. The described relation creates a strong bond between the Applicant and the stated sureties. In my opinion, this bond makes it unlikely that the Applicant would willingly breach the terms and conditions of the bail, as doing so would jeopardise the sureties. Additionally, the ages of the presented sureties, as indicated by their identification documents, reveal that they are considerably older than the applicant, with the youngest being at least 6 years senior and the oldest being 43 years senior to the applicant. This

provides reassurance that they may have an advantage over the applicant when appearing in court.

The record further shows that all the sureties presented recommendation letters from their LC.1 Chairpersons.

The first surety (Timbiti John David) is said to have his permanent home in the area and is known to the Chairperson. He is also said to be a former servant of the UPDF, a law-abiding citizen with no criminal record, and a father to the Applicant. Timbiti John David is presented as a strong candidate for surety based on his established local presence, military background, clean criminal record, and personal connection to the applicant. Each of these factors contributes positively to his profile as someone who can be trusted to fulfil obligations associated with being a surety.

The second surety (Mutonyi Margret) is identified as a native of Busiu and the wife of Timbiti John David, the Applicant's father. She is also recognised as a permanent resident of the area with a permanent house, a peasant, a law-abiding resident with no criminal record, and a mother to the Applicant. Because of her local solid ties through permanent residency, familial connections to the applicant, an absence of criminal history, which enhances her credibility, and an inherent motivation tied to her role as a mother, Mutonyi Margret appears to be a stable individual for standing surety. The aforementioned factors collectively support her potential effectiveness in this role as a surety.

The third surety (Napwoli Sam) is said to be born in Namisindwa District and a permanent resident of the area with a permanent house. He is also said to be a law-abiding resident with no criminal record. However, the recommendation letter from the area LC 1 Chairperson does not describe the economic activity the surety is engaged in. While Napwoli Sam presents several positive attributes as a potential surety—such as strong local ties and a clean criminal record—the lack of information regarding his economic activities creates uncertainty about his financial capacity to act as a reliable guarantor. For him to be considered an ideal surety, it would be beneficial to provide details about his source (s) of income.

The fourth surety (Amina Magona Mohamed) is known to the Chairperson as a tenant at Mr. James Omilo's rental property in his jurisdiction. She is also said to be a businesswoman who supports the community, a law-abiding resident with no known criminal record, and a sister-in-law to the Applicant. Based on the provided information on record, Amina Magona Mohamed is well-positioned to serve as a surety due to her strong community ties, positive legal standing, and personal relationship with the applicant.

The fifth surety (Buyela Moses Bosco) is said to be a peasant and a permanent resident of the area. He is also said to be a law-abiding resident with no criminal record and a brother-in-law to the Applicant. Given his stable background, adherence to the law, and familial ties to the applicant, Buyela Moses Bosco is well-suited as a surety.

The court finds that the sureties' particulars are detailed enough to ensure their traceability. This fact is crucial in assessing their substantiality as sureties. Additionally, Information provided by surety one, two, four and five through individual introductory letters regarding their socioeconomic standing in society is considered adequate. This makes it easier for the court to assess their ability to fulfil the bail bond obligations should the applicant flee. The introductory letter of Surety three made no mention of his social-economic standing in society. The lack of information regarding his economic activities creates uncertainty about his financial capacity to be a reliable guarantor. Therefore, surety one, two, four and five are recognised as substantial and approved, while surety three is rejected.

In light of the foregoing, the applicant has given sufficient evidence to guarantee that he will not abscond when granted bail.

1. Decision

By presenting substantial sureties and demonstrating that he has a fixed place of abode, the Applicant has given sufficient guarantees that he will not abscond when granted bail. This Application is allowed. The Applicant is granted Bail Pending Trial on the following terms:

1. The Applicant will deposit a sum of UGX in court. 3,000,000/=;
2. The Approved Sureties are Timbiti John David, Mutonyi Margret, Amina Magona Mohamed, and Buyela Moses Bosco;
3. Each of the sureties shall execute a non-cash bond of UGX. 10,000,000/=;
4. The Applicant is directed to Appear before the Deputy Registrar of the High Court Criminal Division once a month, effective November 15, 2024.

It is so ordered.

Gadenya Paul Wolimbwa

JUDGE

4th November 2024

The decision was delivered in open court in the presence of the parties and Najjib Kagwa, Court Clerk.

Gadenya Paul Wolimbwa

JUDGE

4th November 2024

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