

UGANDA / JUDGMENT

Mugera v Uganda (HCT-00-ICD-CR-SC 2 of 2023) [2023] UGHCI CD 11 (28 March 2023)

[2023] UGHCI CD 11

COURT

HC: International Crimes Division (Uganda)

BEFORE

Komuhangi, J

CASE / FILE NUMBER

HCT-00-ICD-CR-SC 2 of 2023

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(INTERNATIONAL CRIMES DIVISION) CRIMINAL MISCELLANEOUS APPLICATION
0002 OF 2023 (ARISING FROM HCT-ICD-SC-0004-2022)**

| MUGERA JOHN | APPLICANT |

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| VERSUS | |

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UGANDA..... RESPONDENT

BEFORE: HON. LADY JUSTICE ALICE KOMUHANGI KHAUKHA**RULING****Introduction**

This is a ruling in respect of Criminal Miscellaneous Application No. 2 of 2023 for bail. The application was brought under Article 23 (6) (a) and 28 (3) (a) of the Constitution of the Republic of Uganda, Rule 2 and 4 of the Judicature (Criminal Procedure) (Application) Rules and Section 14 and 15 of the Trial on Indictments Act.

The applicant is charged with the offence of Terrorism contrary to section 7 (1) (A) and (2) (B) of the Anti-Terrorism Act, 2002 and Murder contrary to sections 188 and 189 of the Penal Code Act, Cap. 120.

Representation

The applicant was represented by Counsel Wilbert Muhereza, Counsel Rubeizi Jacob and Counsel Jonus Mwesigye all from Owoyesigire, Muhereza & Co. Advocates on private brief while the respondent was represented by Mr. Richard Birivumbuka, Chief State Attorney from the Office of the Director of Public Prosecutions. The applicant was present in court when the hearing of the application took place.

The Application

The application is by way of a Notice of Motion and supported by the Affidavit of the applicant.

The applicant's Affidavit can be summarized as follows:

- 1. That the applicant has been on remand at Luzira Upper Government Prison for eighteen months now since September 2021;
- 2. That on the 12th day of November 2021, the applicant was committed for trial to the International Crimes Division of the High court of Uganda on the offences of Terrorism contrary to section 7 (1) (A) and (2) (B) of the Anti-Terrorism Act, 2002 and four alternative counts of Murder contrary to sections 188 and 189 of the Penal Code Act, Cap. 120;
- 3. That the pre-trial hearing of the case has been ongoing for seven months now since July 2022 and the same is not yet concluded;
- 4. That there is a high likelihood of substantial delay in hearing and/or determination of HCT-ICD-SC-0004-2022 in the International crimes Division of the High Court;
- 5. That the applicant has a fixed place of abode at Kiyembe Zone, Kibuye 2 Parish Makindye Division, Kampala and that he also has an up-country residence at Lubira LC1, Central Zone 12, Kyotera District comprised in Budu Block 784, Plot 613 where he has both his place of abode and business of a bar and lodges in his own property trading as Kamuda Guest House & Bar;
- 6. That the applicant has substantial and sound sureties within the jurisdiction of this honourable court to wit: Mr. Tumwakire Moses, Mr. Kirangwa Anatoli and Mr. Mayiga Chrizestom who are willing to undertake the applicant's attendance of court proceedings and his compliance with the terms and conditions of his bail application;
- 7. That the applicant undertakes to abide by all terms and conditions imposed by this honourable court whenever the case is fixed; and
- 8. That it is only just, equitable and constitutional that this honourable court grant this application of bail pending hearing and determination of HCT-ICD-SC-0004-2022.

Mr. Lino Anguzu an Assistant Director of Public Prosecutions in the Office of the Director of Public Prosecutions filed an Affidavit in opposition of the application that can be summarized as follows:

- 1. That the applicant was charged with terrorism, three counts of murder, aiding and abetting terrorism and attempted murder and he was subsequently committed to trial vide Masaka 605/2021;
- 2. That it is not true that there will be substantial delay in the hearing of this case;
- 3. That it is not true that the applicant has a fixed place of abode;
- 4. That annexure AA, a receipt that was purportedly given to the applicant after allegedly paying rent is in the name of John Mugela and yet the applicant is John Mugeru;
- 5. That John Mugela and John Mugeru are two different names;
- 6. That the sureties presented by the applicant are not substantial;
- 7. That the offences with which the applicant is charged are grave, involve personal violence and carry a maximum sentence of death upon conviction;
- 8. That the applicant will abscond if granted bail and interfere with state witnesses;
- 9. That the applicant has not demonstrated any ground to merit his release on bail;
- 10. That it is in the best interest of justice that this application is dismissed.

Submissions

Counsel for the applicant filed written submissions on behalf of the applicant while the respondent made oral submissions opposing the bail application. Counsel for the applicant made oral submissions in rejoinder. The applicants' submissions in rejoinder were made by Counsel Rubeizi Jacob and Counsel Wilbert Muhereza.

The applicant's submissions

Counsel for the applicant submitted that the applicant together with six others were committed before this honourable court for trial by the Masaka High Court on 12th November 2021 and he has been on remand since July 2021. That since the applicant's committal in November 2021, the pretrial conferencing alone has been ongoing for seven months now and the same has not been concluded hence the application for bail pending trial.

While relying on Article 23 (6) (a), 28 (3) (a) of the Constitution, section 14 & 15 of Trial on Indictments Act (hereinafter referred to as the T. I. A) and Rules 2 & 4 of the Judicature (Criminal Procedure) (Applications) Rules (hereinafter referred to as the Criminal Procedure Rules, Counsel for the applicant submitted that it is the applicant's constitutional right to apply for bail, the applicant has a fixed place of abode within the jurisdiction of this court and will not abscond when released on bail, the applicant has sound sureties who will ensure that he abides by the

conditions set by this honourable court and that there is a likelihood of substantial delay on hearing or determining of the case against the applicant.

On the aspect of the constitutional right to apply for bail, counsel for the applicant submitted that the essence of grant of bail is premised on the presumption of innocence and that a person accused of criminal offences is entitled to apply to the court to be released on bail on such conditions court considers fit. Counsel cited the case of *Foundation for Human Rights Initiative versus Attorney General Constitution Petition No. 20 of 2009* and submitted that court retains the discretion to grant or not to grant bail. However, court needs to balance the primary purpose of grant of bail which is to ensure that the applicant appears to stand trial without the necessity of being detained in custody during the period of trial and one of the main concerns to the court in all bail applications is that the accused will not abscond when released on bail.

Counsel for the applicant also cited sections 14 & 15 of the T. I. A which provide for conditions/ circumstances under which an accused person can or cannot be released on bail. He further provided case law to wit: *Foundation of Human Rights Initiatives versus Attorney General, Constitutional Appeal No. 3 of 2009; Abindi Ronald and Anor versus Uganda, Miscellaneous Criminal Application No. 0020 of 2016; Tumwirukirire versus Uganda HCT-05-CV-MA-94 of 2019* and *Dr. Ismail Kalule versus Uganda Miscellaneous Application No. 001 of 2018* to harness the fact that the applicant is presumed innocent until proved guilty, that he is entitled to protection of his personal liberty and that he has no previous criminal record or record of jumping bail.

On the aspect of a fixed place of abode within the jurisdiction of this court, Counsel for the applicant submitted that the applicant has furnished details of two fixed places of abode that is, one at Kiyembe village urban council, Kibuye II Parish, Makindye Division, Kampala District where he resides with his family and an upcountry home located in Lubira LC1, Central Ward, Kyotera Town Council, Kyotera District, comprised in Budu Block 784, Plot 613, where he also operates a bar and lodges.

In regard to the ground of whether the applicant has sound sureties who will ensure that he abides by the conditions of bail set by this honourable court, Counsel for the applicant presented three sureties on behalf of the applicant to wit:

1. Kirangwa Anatoli

Age: 49 years

National Identity Card Number: CM72036102NX2L

Contact: 0704-451888

Residence: Quarter Zone LC1, Najjanankumbi II Parish, Rubaga Division, Kampala District. He presented an LC1 introductory letter.

Occupation: Business man dealing in Agro-chemicals and seeds located at container village, Kampala.

Relationship with the applicant: Friend and partner in business.

2. Tumwakire Moses

Age: 37 years

National Identity Card Number: CM84055101ZLLL

Contact: 0782-752073

Residence: Gangu A cell, Busabala Ward Masajja Division, Makindye Sabagabo, Wakiso District. He presented an LC1 introductory letter

Occupation: Business man dealing in spirits, wines, Waragi. **Relationship with the applicant:** Friend, neighbor and customer.

3. Mayiga Chrizestom

Age: 41 years **National Identity Card Number:** CM820361044MXE **Contact:** 0703-642901 **Residence:** Kitende Kajansi Town Council, Wakiso District. He presented an LC1 introductory letter.

Occupation: Architect with Design Technocrats situated at Muganzirwaza complex, Katwe.

Relationship with the applicant: Cousin

It was Counsel for the applicant's submission on the aspect of a likelihood of substantial delay on hearing or determining of the case against the applicant that the pre-trial conferencing commenced on 19th July 2022 when the applicant had spent one year on remand. That the same has been ongoing for approximately nine months now and it is not yet concluded. Counsel argued that the case against the applicant has not been cause-listed in any of the International Crimes Division sessions and as such, the applicant's fears that the hearing and determination of the case against him will substantially delay are justifiable and proved. That the applicant's detention for one year and nine months now before the commencement of hearing of the case against him is in violation of his right to a speedy trial as enshrined under Article 28 (1) of the Constitution.

Counsel for the applicant therefore prayed that in the interest of justice, it is just, equitable and constitutional that this honourable court be pleased to find that the applicant has met the conditions necessary for grant of bail and exercise its discretion judiciously and be pleased to release the applicant on bail on such conditions court considers reasonable.

The respondent's submissions

Mr. Richard Birivumbuka opposed the application through the affidavit of Mr. Lino Anguzu, Assistant DPP. He submitted that the affidavit of the applicant is speculative on the fact of a likelihood of substantial delay. He stated that this matter is in the advanced stages of pre-trial. That the applicant had raised the same issue in an earlier application, Miscellaneous Application No. 02 of 2022 and while dismissing the application, the trial judge at page 12 of the Ruling noted

that the trial had already started. Mr. Birivumbuka also stated that this is a matter of 2021 and it is under trial. That there are cases of 2018 whose trial has not yet began. That the argument that this matter will delay does not hold water.

Mr. Birivumbuka further submitted that the applicant does not have a fixed place of abode. He referred court to annexure "AA" which is a receipt issued by Kyakuwa rentals to John Mugela and contended that a rental house is not a fixed place of abode. He also submitted that the receipt bears the name John Mugela who has been in custody since 2021. That it is not possible that someone who is in custody paid rent. He further submitted that the names on the receipts are different from the name of the applicant, that is "Mugera" and "Mugela". He also contended that there were inconsistencies in the applicant's place of abode as each surety stated a different place of abode from the other. That the 1st surety stated that the applicant resides at Calendar, Kibuye in Makindye Division while the 2nd surety stated that the applicant resides at Kibiri A which is also different from what the 3rd surety stated. That

annexure "A" of the applicant's affidavit shows that the applicant is a resident of Kibuye, Makindye Division, Kampala.

Mr. Birivumbuka further contended that the 2nd surety said that the applicant has a house at Kibiri "A" Zone, Busabala and so did the 3rd surety. That if we were to go by that, why would annexure "AA" be a receipt indicating that the applicant is renting? Also, that annexure "AA5" presupposes that the applicant resides at Kiyembe zone and that would mean that the residence given by surety No.1 and No. 2 does not exist. He further submitted that we would have expected an introduction letter from Kibiri "A" zone or Calendar. He stated that if the court is agreeable, that is enough for this court to dismiss the application.

While relying on the case of *Tumusiime David versus Uganda, HCT-MA-29-2019*, Mr. Birivumbuka submitted that an applicant should not be incarcerated if they have a fixed place of abode and sound sureties and the reverse is true.

Mr. Birivumbuka further argued that the sureties presented were not substantial. Regarding the 1st surety, Mr. Birivumbuka submitted that he appeared careless and negligent because he came to court without a National Identity Card which implies that he is not a responsible person worth trusting. That his introduction letter did not reflect anywhere that he had a fixed place of abode in that area which is very important. He further stated that the Certificate of Title presented by the 1st surety had no nexus with his introduction letter. That the Certificate of Title is in the name of Masaka Farm Store Ltd and as such does not belong to the surety. Mr. Birivumbuka prayed that the said Certificate of Title should be disregarded. He also added that the bank statement of the 1st surety is in a bad state. That the 1st surety is in a financial crisis as his balance is so low. That he did not see the possibility of the 1st surety executing a bond of about 100 million and prayed that the 1st surety should be found not substantial.

On the 2nd surety, Mr. Birivumbuka submitted that he did not know where the applicant resides. That the 2nd surety stated that the applicant is a resident of Kibiri "A" Busabala which is different from what the applicant states. That the 2nd surety states that the applicant deals in spirits while

the 1st surety stated that the applicant deals in other commodities. That the 2nd surety said that the applicant only goes to Kampala and his village which was a reckless statement. That the 2nd surety's letter of introduction did not reveal whether he has a fixed place of abode which is a crucial aspect for sureties.

Regarding the 3rd surety, Mr. Birivumbuka submitted that he did not present his work Identity Card yet he alleges to be an employee of Design Technocrats which is a sign of irresponsibility. That the 3rd surety does not know where the applicant resides. That the 3rd surety's claim to be a cousin of the applicant cannot be relied upon because he has not visited the home of the applicant. That the 3rd surety said that the applicant resides where he works, his introduction letter does not state that he has a fixed place of abode and yet that is the only document that can be used to track the surety.

Mr. Birivumbuka while relying on the cases of *Kapisi Fred & Another versus Uganda HCT-05-CMA-108-2019* and *Tigawalana Bakali Ikoba versus Uganda Cr. App. No. 23 of 2003*, submitted that the applicant is charged with grave offences and the likelihood of absconding and interfering with the witnesses are so high. That this case involves personal violence and prayed that court takes that into consideration.

Mr. Birivumbuka also contended that the applicant has not demonstrated any grounds for release on bail as such, the application should be dismissed. That under Rule 54 of the ICD Rules, an accused person can only be released on bail by a panel of judges or a judge at a trial level and not at pre-trial.

Applicant's submissions in rejoinder

Counsel Jacob Rubeizi while rejoining submitted that whereas it is true that this matter is at its pre-trial, court should consider that it has taken months this far. That the delay has partially been on account of numerous referrals to the constitutional court by two of the accused persons who are now on bail. That there is no guarantee as to when this matter will be set down for hearing because we are not sure how long those constitutional referrals will take.

On the issue of a fixed place of abode, Counsel Rubeizi submitted that the state attorney confirms on the charge sheet that the applicant is a resident of Kiyembe Zone, Kibuye Makindye Division, Kampala. That this is corroborated by the National Identity Card of the applicant marked as AA7 on the application (Original National I. D No. CM78036102TF9A) shows Kiyembe, Kibuye II Makindye Division, Kampala District. That Annexure AA5 is a letter by Waswa Kassim the Chairman of Kiyembe village, Kibuye II Parish, Makindye Division and therein the applicant is identified as a resident. The chairman also confirms that the applicant owns a wholesale shop in Kiyembe zone.

Counsel Rubeizi further submitted that annexure AA6 is authored by the chairperson of Lubira LC1 Central Zone, Kyotera. It confirms that the applicant also has a place of residence in Kyotera. That annexure AA4 is a Certificate of Title for the applicant's residence in Kyotera. Counsel submitted that what the prosecution called discrepancies as gathered from the sureties, the law

does not stop any person from having more than one residence. His urban residence is at Kiyembe Zone as indicated in paragraph 6 of his affidavit while his upcountry residence is at Lubira Central Zone 12 in Kyotera District.

Concerning the discrepancies in the names "Mugela" and "Mugera", counsel Rubeizi submitted that the applicant's name has been inadvertently misspelt. That there was an error on the receipt. It was supposed to be "Mugera" and not "Mugela". That it was just a misnomer.

On the issue of the payment made while in incarceration, Counsel Rubeizi submitted that the receipt was issued to the applicant despite him being in prison at the time because he is the tenant.

Counsel Muhereza while rejoining on the issue of the inconsistencies on the sureties, he submitted that the 1st surety in Annexure CC4 is described as a land lord. That this confirms his tenure of occupation of the area as a permanent resident. That the Certificate of Title of the 1st surety that is in the names of the company shows that the 1st surety is trading as Masaka Farm Store and that he attached copies of the Company documents to wit: Memorandum and Articles of Association. That at page 29 of the said documents, the 1st surety possesses 60% of the Company and he is the majority shareholder. That this gives him the biggest stake in the Company.

Counsel Muhereza further submitted that the bank statement of the 1st surety should be looked at in its entirety not particular pages. That the account has received millions of monies and it was intended to show the surety's ability to pay a bond. Counsel further stated that the last time the application was denied because they had not furnished court with evidence of the successfulness of the business. That the 1st surety's National Identity Card was delivered in its original state and the surety explained that it stayed in the vehicle as he rushed to the court because he was running late.

Regarding the second surety, Counsel Muhereza stated that he indicated his place of abode and provided a copy of the purchase agreement. He explained that the applicant runs a business at Kiyembe LC where he has known the applicant for eleven (11) years. As such, the 2nd surety knows where to find the applicant.

Concerning the 3rd surety, Counsel Muhereza submitted that they had attached a photocopy of his employment Identity Card and undertook to avail the original to the court and the prosecution. He therefore prayed that the sureties should be found substantial as they have demonstrated their places of residence and they are traceable. Counsel Muhereza further invited this court to find the two places of abode traceable and grant the applicant bail.

On the issue of the gravity of the offence, Counsel Muhereza submitted that it would be in disregard of the presumption of innocence of the accused person and the authorities he had filed were relevant.

Counsel further submitted that the state was just speculating because there was no demonstration that the applicant will abscond and interfere with witnesses. He also argued that Rule 54 of the ICD Rules does not override the Constitution and the T. I. A and the inherent powers of this court. He invited court to be cognizant of the fact that the other co-accused are on bail.

Position of the Law

Article 23 (6) (a) of the Constitution of the Republic of Uganda, 1995 (as amended) stipulates that:

"Where a person is arrested in respect of a criminal offence, 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."

Article 28 (3) (a) of the constitution of the Republic of Uganda, 1995 (as amended) provides that:

"Every person who is charged with a criminal offence shall- (a) Be presumed innocent until proved guilty or until that person has pleaded guilty;"

Section 14 of the Trial on Indictments Act, Cap. 23 provides for release on bail. Sub-section 1 thereof stipulates 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."

Section 15 of the TIA provides for refusal to grant bail.

Sub-section 1 thereof provides that:

"Notwithstanding section 14, the court may refuse to grant bail to a person accused of an offence specified in sub-section (2) if he or she does not prove to the satisfaction of the court-

- (a) that exceptional circumstances exist justifying his or her release on bail; and
- (b) that he or she will not abscond bail."

Subsection 2 thereof stipulates that:

"An offence referred to in subsection (1) is-

(a) an offence triable by the High Court;

- (b) an offence under the Penal Code Act relating to acts of terrorism or cattle rustling;
- (c) an offence under the Firearms Act punishable by sentence of imprisonment of not less than ten years;
- (d) abuse of office contrary to section 87 of the Penal Code Act;

- *(e) rape, contrary to section 123 of the Penal Code Act and defilement contrary to sections 129 and 130 of the Penal Code Act;*
- *(f) embezzlement, contrary to section 268 of the Penal Code Act;*
- *(g) causing financial loss, contrary to section 269 of the Penal Code Act;*
- *(h) corruption, contrary to section 2 of the Prevention of Corruption Act;*
- *(i) bribery of a member of a public body, contrary to section 5 of the Prevention of Corruption Act; and*
- (j) *any other offence in respect of which a magistrate's court has no jurisdiction to grant bail."*

Subsection 3 thereof provides that:

"In this section, "exceptional circumstances" means any of the following-

- *(a) grave illness certified by a medical officer of the prison or other institution or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody;*
- *(b) a certificate of no objection signed by the Director of Public Prosecutions; or*
- *(c) the infancy or advanced age of the accused."*

Subsection 4 thereof stipulates that:

"In considering whether or not the accused is likely to abscond, the court may take into account the following factors-

- *(a) whether the accused has a fixed place of abode within the jurisdiction of the court or is ordinarily resident outside Uganda;*
- *(b) whether the accused has sound sureties 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 against the accused."*

The Constitutional (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 provides for considerations for bail. Paragraph 13(1) thereof provides that:

"The court shall consider the following in handling a bail application: -

- *(a) the gravity of the offence;*
- *(b) the 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;*
- *(f) the likelihood of the applicant to attend court;*
- *(g) 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;*
- *(j) the safety of the applicant, the community and the complainants;*
- *(k) whether the applicant has a fixed place of abode within Uganda or whether he or she is ordinarily resident outside Uganda;*
- *(l) whether the applicant has sufficient sureties within Uganda to undertake that the applicant shall comply with the conditions of his or her bail;*
- *(m) whether the applicant has on a previous occasion when released on bail, failed to comply with his or her bail terms;*
- *(n) whether there are any other charges pending against the applicant; or*
- *(o) Whether the offence for which the applicant is charged involved violence."*

Decision

From the above provisions of the law, it is apparent that the two broad factors for court's consideration while making a decision whether or not to grant bail are:

(a) that exceptional circumstances exist justifying his or her release on bail; and (b) that he or she will not abscond bail."

In the instant case however, the applicant did not plead exceptional circumstances. Therefore, the only factor for court's consideration while deciding whether or not to grant him bail is whether he will not abscond if granted bail.

The likelihood of the applicant absconding if granted bail

Section 15 (4) of the T. I. A provides that:

"In considering whether or not the accused is likely to abscond, the court may take into account the following factors-

- *(a) whether the accused has a fixed place of abode within the jurisdiction of the court or is ordinarily resident outside Uganda;*

- *(b) whether the accused has sound sureties 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 against the accused."*

In the instant application, no evidence was adduced by the prosecution to show the existence of (c) and (d) above. I am therefore satisfied that the applicant has not previously been released on bail and failed to comply with the conditions of his bail and there are no other charges pending against him save for the current ones. This leaves me with only (a) and (b) which are as follows:

- i. **Whether the accused has a fixed place of abode within the jurisdiction of the court or is ordinarily resident outside Uganda.**

In this application, court had four sources from which to establish the places of abode of the applicant namely: the applicant's affidavit in support of the application, his National I. D, the Charge Sheet, the introductory letter of the Local Council I chairman and from the evidence of the sureties presented to court.

Having considered the evidence of the applicant's place of abode thoroughly, I established that three places are mentioned that is:

- 1) Kiyembe Village Urban Council, Kibuye II Parish, Makindye Division, Kampala District which is indicated on the applicant's National I. D (which I had the opportunity to look at), the charge sheet, his affidavit in support of the application, the LC1 letter from Wasswa Kassim, the chairperson of Kiyembe Village Urban Council marked as "AA6" and by the 1st surety, Kirangwa Anatoli and the 3rd surety, Mayiga Chrizestom;
- 2) Kibiri "A" Zone, Busabala Makindye Sabagabo in Wakiso District mentioned by the 2nd surety, Tumwakire Moses and the 3rd surety, Mayiga Chrizestom as the place where the applicant's wife and children are currently residing; and
- 3) Lubira LC1 Central Zone Cell 12, Kyotera which is indicated in the applicant's affidavit in support, a Certificate of Title marked as AA4 indicating that the applicant is the proprietor of land comprised in Buddu block 784 Plot 613 land at Masaka having purchased the same on 24th July 2018, receipts of payment of property rent marked as AA3 and a letter from the LC1 Chairperson of Lubira LC1 Central Zone Cell 12, Kyotera town council, Kyotera District.

As already discussed, the prosecution insisted that the applicant does not have a fixed place of abode within the jurisdiction of this court. Mr. Birivumbuka mainly attacked the contradictions that were brought about by the sureties that were presented. I agree with him that the sureties contradicted the applicant regarding the applicant's place of abode. However, I find that the applicant was consistent regarding his place of abode. In paragraph 6 of his affidavit, he stated that he had a fixed place of abode at Kiyembe Zone, Kibuye 2 Parish, Makindye Division Kampala District. He attached a Receipt for rent issued by Kyakuwa Rentals (AA) but I do not find the said

Receipt supportive because it does not indicate the location of Kyakuwa Rentals. The applicant also relied on the introductory letter from the Local Council I Chairman, Mr. Wasswa Kassim who confirmed the same residence. The same place of residence was found on his National Identification Card and the Charge sheet. He also provided a residence in Kyotera District comprised in Buddu Block 784 Plot 613 where he resides and also operates a business of bar and lodges.

In light of the above, I find that despite the contradictions brought about by the sureties, the applicant in all the documents consistently stated his place of abode as Kiyembe Zone, Kibuye 2 Parish, Makindye Division Kampala District and Kyotera District comprised in Buddu Block 784 Plot 613. He has therefore satisfied this honourable court that he has a fixed place of abode within the jurisdiction of this court.

ii. Whether the accused has sound sureties within the jurisdiction of the court to undertake that the accused shall comply with the conditions of his or her bail.

Regarding the substantiality of the sureties, Paragraph 15 of the Bail Guidelines provides guidance on what to consider while determining the suitability of the sureties namely:

(a)the age of the surety; (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.

Sub Paragraph (2) thereof provides subject to sub paragraph (1), the proposed surety shall provide documentary proof including –

(a)a copy of his or national Identity Card, passport or aliens identification card;

- *(b)an introduction letter from the Local Council I chairperson of the area where the surety is ordinarily resident; or*
- (c) *asylum seeker or refugee registration documents issued by the Office of the Prime Minister*.

The applicant produced three sureties as already mentioned above. I would also wish to observe that I personally examined the sureties in the court to ascertain their soundness. As earlier discussed, Mr. Birivumbuka vehemently contended that the sureties were not substantial while counsel for the applicant insisted that the sureties were substantial.

After thoroughly examining the sureties that the applicant produced, I am not satisfied that they are substantial. They all did not seem to know the applicant well enough for this court to entrust them with the heavy responsibility of a surety. This was evident when the sureties gravely contradicted the applicant on his place of abode. Whereas the applicant was consistent that he was resident at Kiyembe Zone, Kibuye 2 Parish, Makindye Division Kampala District, the sureties gravely contradicted him. For instance, the 1st surety Mr. Kirangwa Anatoli stated that the applicant stays near Calendar, the 2nd surety Mr. Tumwakire stated that he knew the applicant's home where he has visited before and it is at Kibiri "A" Zone, Busabala Road Makindye Sabagabo.

Mr. Tumwakire also stated that the applicant owns a home there which houses his wife and his children while the other rooms are rented out. If this is indeed true, why didn't the applicant also allude to it in his application? On the contrary, the applicant produced a receipt for rent (AA) implying that the home where he stays is not owned but rather rented premises. The 3rd surety who claimed to be the cousin of the applicant also stated that the applicant stays at Kibiri "A" zone which I find contradictory to the applicant's averments in his application and the attachments thereto.

Besides, the sureties seemed so unclear about the relationship they have with the applicant. The 1st surety for instance stated that the applicant was his brother, then he said a clan mate and later that they were doing business together because he would borrow money from him. The 2nd surety said that the applicant is his neighbor at the business premises which are rented premises. Though the 3rd surety claimed to be the applicant's cousin, he still did not seem to know him much. I find that for the first two sureties, that is Mr. Kirangwa Anatoli and Mr. Tumwakire Moses, do not have a strong enough relationship with the applicant to enable them compel him to attend court. From my observation, the first two sureties are friends of the accused because of their businesses and nothing else. I find it risky to entrust the said two sureties with such a responsibility when the only relation they seem to have with the applicant is business related. What happens in the event that the applicant stops doing business with them and/or in the area that is known to them? Whereas, it is not a legal requirement that the applicant should present blood relatives or family members as sureties, I find the same are more convincing in effecting their responsibility as sureties. It was only the 3rd surety that could fit this category since he said that he was the applicant's cousin. However, from my observation, he also did not know much about the applicant.

Also, considering the nature of the offences with which the applicant is charged, I find it unsafe to grant him bail with the sureties that he presented. They clearly will not be able to perform the duties of a surety on the applicant. I do not find them substantial and I accordingly reject them. In the absence of substantial sureties, I find that the likelihood of absconding is high.

Resultantly, this application fails and is accordingly dismissed.

Dated at Kampala this 28th day of March 2023.

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Alice Komuhangi Khaukha **JUDGE** 28/03/2023

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