

**Mugisha v Uganda (Criminal
Miscellaneous Application 222 of 2022)
[2023] UGHCCRD 74 (31 July 2023)**
[2023] UGHCCRD 74

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It is stated that the Mugisha was charged with the offence of Murder c/s 188 and 189 of the Penal Code Act and remanded in Kigo Prison. On the 1st day of August 2022 he was committed to the High Court for trial and has been on remand since. He avers that he has a constitutional right to apply for bail.

That he has a permanent place of abode in Bumpenje village Bulwanyi Parish, Sissa Sub County in Wakiso district, a place he has lived all his life. He states that he will not abscond if released, adding that he has substantial sureties who are willing to

Reviewed by Of Kindle Krocates Lyony Shalling Krocated Krocates

stand for him. That the sureties will abide by any conditions that the court may set. That he has never been convicted of any criminal offence and it is in the interest of justice that this application be granted.

The state opposes this application and in an affidavit deposed by Adong Harriet, a State Attorney in the Office of the Directorate of Public Prosecutions, states that the applicant is charged with a serious offence of Murder which attracts a maximum sentence of death. It is sated that the applicant has not proved that he has a fixed place of abode and that he will abscond if released on bail.

In addition, his sureties have not shown that they have fixed places of abode and they cannot therefore be considered substantial.

Lastly the applicant has not proved exceptional circumstances to warrant a release on bail.

Determination

Bail is a recognisance between the accused and court; a conditional release on the understanding that the accused person will be in Court whenever required. It allows him/her to avoid pre-trial detention and attend court from home.

It is now settled that the court is clothed with the discretion whether or not to grant bail. In Constitutional Ref No. 20 of 2005, Uganda vs Col (Rtd) Dr Kiiza Besigye it was held that under Article 23 (6) (a), and as properly stated by the applicant in this case, he is entitled to apply for bail and courts have the discretion whether or not to grant it.

Judicial discretion according to the 8th Edition of Black's Law Dictionary is the exercise of judgment based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right.

It has been held that Judicial discretion is exercised by Court when it considers all that is before it and reaches a decision without taking into account any reason that is not a legal one. The Court acts within the rules of reason, justice and law, within the limits and the objects intended by a particular legislation. (See: R vs Board of Education [1990] 2 KB 165).

The court therefore applies its judicial mind to determine what would be fair in the circumstances. It will not act to defeat the ends of justice nor capriciously or arbitrarily.

The relevant provisions of the legislation governing a release on bail by the High Court, within which court exercises its discretion, are ss 14 and 15 of the Trial on Indictments Act (TIA). These are the sections that regulate release on bail for offences only triable by the High Court including Murder, the offence the applicant is charged with.

Section 15 (1) of TIA stipulates,

Notwithstanding section 14, the court may refuse to grant bail to a person accused of an offence specified in subsection (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: an
- (b) that he or she will not abscond when released on bail.

S.15 (3) (c) of the TIA states,

- (3) 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

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- (c) the infancy or advanced age of the accused.

The position in this case is that the applicant is already committed to the High Court for trial. The fact of committal should not however prejudice the right to apply and be considered for bail. An application can be entertained at any stage of the matter. It is true that the primary determinant in considering a release on bail, is whether the applicant will be available to attend his trial whenever he is required in Court. In this case the applicant is charged with a capital offence. It is inevitable that the possibility of a looming death sentence would have to be a consideration when determining whether or not a person may abscond. I have taken into consideration the circumstances of the applicant including his sureties and place of abode.

The applicant is committed and the matter is ready for trial. I have also examined the evidence outlined in the summary of the case. While the applicant enjoys the presumption of innocence, it is true that the nature of the offence will be a consideration and the court would therefore have to consider the public interest as well. Every matter is weighed on its unique circumstances but the particularly gruesome nature of the offence here together with the alleged confession are a factor in determining whether bail should be granted.

After an evaluation of all the above, this court finds that the applicant does not merit a release on bail. Accordingly, the application fails and is dismissed.

Michael Elubu Judge 31.07.2023

Ruling delivered in the presence of:

1. Mr. Lumu Shakim, for the Applicant.
2. The Applicant/Accused.

Court Clerk - Mr. Kayemba Edward.

Festo Nsenga – Deputy Registrar

\$02/08/2023 - 11:00\$ a/m

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