

UGANDA / JUDGMENT

Musijjo Asuman v Uganda

(HCT-OO-ICD-CM-0019-2018) [2019]

UGHCICD 1 (30 December 2019)

[2019] UGHICD 1

COURT

HC: International Crimes Division (Uganda)

BEFORE

Adonyo, J

CASE / FILE NUMBER

HCT-OO-ICD-CM-0019-2018

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

THE INTERNATIONAL CRIMES DIVISION (ICD)

HCT-00-ICD-CM-0019-2018

MUSIJJO ASUMANAPPLICANT/ACCUSED

VERSUS

UGANDA RESPONDENT

BEFORE: HON. JUSTICE DR. HENRY PETER ADONYO

RULING

1. Background :

This matter originally came up for hearing on 26th February 2019. It could not proceed based on the fact that the applicant had no legal representative in court.

The applicant informed the court that he could not afford to hire a lawyer to represent him during the hearing of the bail application and that he had been informed that a lawyer could only be allocated to him at start of the trial.

On that date the respondent was represented by who was handling the matter then, Ms. Marion Ben Bella, a State Attorney.

Upon hearing the statement of the applicant on his inability to procure a legal representative so that the hearing of the bail application could proceed, the court ordered the registrar of the court to allocate on state brief a lawyer would then represent the applicant during his bail application.

Subsequently Ms. Namaweje Sylvia Ebitu was appointed by the Registrar of the court to represent.

The matter then was set up and came for hearing before me on the 4th November, 2019. Ms. Namaweje Sylvia Ebitu appeared for the Applicant and Ms. Lillian Alum Omara, a Senior State Attorney appeared for the Respondent. Mr. Kiyuba Cornelius was the Court Clerk.

1. Legal basis of this Application:

This application is brought under **Article 23 (6) (a), 28 (3) (a) of the Constitution of Uganda, Section 14 (1) of the Trial on Indictments Act and Rules 2 and 4 of the Criminal Procedure (Application Rules)** for orders that the applicant, Musijjo Asuman who is currently remanded at Luzira Upper Prison be released on bail pending the hearing and determination of the case against him.

The grounds of the application as contained in the notice of motion are that;

1. The applicant will not abscond from the jurisdiction of the court if granted bail
2. The applicant has a constitutional right to apply for bail
3. The applicant be granted bail by the honourable court on fair, affordable and lenient terms and conditions
4. The hearing of the case against the applicant has taken long and is likely to take longer due the court's busy schedule of the courts
5. It is in the interests pf justice that the applicant be released on bail pending his trial

In support of this application, the applicant swore an affidavit dated 26th September 2018. In Paragraph 2, the applicant states that he was arrested on 8th June 2017 and detained at an unknown destination for over five weeks, and then later transferred to Kireka on 14th July 2017 where he was detained until 8th August 2017.

That later as stated in paragraph 3, he was charged with the offence of Aiding and Abetting Terrorism Contrary Section 8 of The Anti-Terrorism Act; Belonging or Professing to Belong to a Terrorist Organisation Contrary to Section 11 (1) (A) of The Anti-Terrorism Act of 2002; and Rendering Support to a Terrorist Organisation Contrary to Section 11 (I) (B) of The Anti-Terrorism Act.

In paragraph 4 of the same, the applicant states that he was then committed to the International Crimes Division for trial on 2nd March 2018 but that since then his case has never been fixed for hearing and so he was thus applying for bail pending the hearing of his case since he has a permanent place of abode in Kirombe L. C 1, Butabika Parish, Nakawa Division, in Kampala

(Paragraph 5) and that before he was charged, he was a teacher at Kisaana Secondary School at Kalungu, Masaka District. He states that as a result of his detention, he can no longer attend to his profession which has adversely affected his livelihood and that he is no longer able to provide food, school fees and other essential items for his family. (Paragraphs 8 and 9).

The applicant states in paragraph 10, he is the sole bread winner and that his wife being unemployed was unable to meet the needs of the family.

Further, the applicant deposes that he has substantial sureties (Paragraph 11) and that if released on bail, he will be in a better position to prepare his defence and to also ensure that the criminal case against him is fixed for hearing (Paragraph 13).

The applicant concludes in Paragraphs 12 and 14 that the basis for his wishing to be released on bail was that so he can better take care of his family.

Mr. Musinguzi Edward, Detective Inspector of Police, attached to Kampala Metropolitan Police swore an affidavit in reply in opposition to the application which was filed on 26th February 2019. In paragraph 6 of the affidavit, he states that the applicant should not be granted bail for the reason that the offences with which the applicant was charged with were very grave and carry a maximum sentence of death upon conviction and that the fact of the grave result of conviction, it was highly probable, could motivate the applicant to abscond from the court process if bail is granted.

In paragraphs 7 and 8, Mr. Musinguzi deposes that the applicant does not have a permanent place of abode in Kirombe LC I, Butabika Parish since he failed to furnish proof of the same and does not even have sound and substantial sureties to ensure his attendance of court and has failed to furnish proof of that. Further noting that the averments in paragraphs 8, 9, 10, 12, 14 and 15 of the applicant's affidavit in support are not grounds for grant of bail and thus prayed that bail should not be granted to the applicant.

1. Submissions:

During the hearing of this application, Ms. Namaweje Counsel for the applicant, reiterated the fact of the applicant having been committed for trial on 2nd March 2018 but that to date no date for his trial had been set by the Court with his long and uncertain stay in detention causing the applicant both financial and emotional torture yet even were the applicant to be tried later on and found innocent, the time spent unproductively could not be compensated monetarily.

Ms. Namaweje, further submitted that in terms of employment, the applicant was a certified teacher with certificate from the Ministry of Education dated 29th May 2014 and was a teacher from Kisaana Secondary School as confirmed by an employment letter dated 15th March 2015 as confirmed by documents attached to the application.

In relations to where the applicant resided, Ms. Namaweje submitted that the applicant had a fixed place of abode and is a resident of Kirombe B Local Council I Butabika, Nakawa Division. She presented evidence of this fact a letter from the LCI Chairperson the area dated 13th May 2019 and an agreement for the purchase of land dated 3rd January 2015 which confirmed the residency of and the ownership by the applicant of the land and house in the LC area where he has been resident with his wife and children since 2016. She also presented.

Four sureties were presented to support this bail application by the applicant. They are:

1st Surety: Kaala Mukadisi Ndege:

The Applicant's biological mother, adult aged 54 years and a farmer by occupation resident of Bwewere 'B' Cell Manafa Town Council, Manafa District. Identified by National ID Number is No. NIN CF 6409410IP7BE. Copy of which was tendered in court and marked as P. Exh.2.

2nd Surety: Nakyewa Haawa:

The biological sister of the Applicant, adult aged 32 years and a certified Midwife by profession from Kibuuku District Local Council with national identity card No: CF87041103UDF and a Kibuuku District Local Government ID No. KDLG 223. The surety also had a letter of introduction from the LC I Chairperson of Kobolwa I village, Kibuuku Town Council, Kibuuku District dated 2nd April 2019. These documents were tendered on record and marked P. Exh. 3.

3rd Surety: Abu Hamza:

A friend to the applicant, an adult aged 40 years and a farmer by occupation. This surety was identified by a national Identity card number CM 79035100TFWJ. He also had a letter from the LCI Chairperson of Kawempe Division, Kikulu village. (These documents were exhibited and marked P. Exh. 4).

4th Surety: Muloki Abu Rashid:

A brother to the applicant; an adult aged 25 years and is a laboratory technician with a letter of introduction from the LC I Chairperson of Namaale Village, Tirinyi Town Council, Kibuuku District where he is resident and a national identity card number CM 94102103556A. (The documents presented in respect of this surety were marked P. Exh. 5).

Ms. Lillian Alum Omara, did not object to the documents presented but sought an adjournment to have verified the same before she could respond. The adjournment and on the 18th December 2019, Ms. Lillian Omara, informed the court that the investigating officer of the charges against the applicant had verified the documents of the sureties and found them all to be authentic. However, she went on to object to the application basing on an affidavit deposed by Detective AIP Ochuon Celsius that while the applicant was basing his need to apply for bail based on the issue of delay in prosecuting his trial and laying the blame on the prosecution for the same, that was not true for the state was equally eagerly ready to proceed with the trial but that no date had been set by court for the trial.

Ms. Omara, further submitted that while it was true that the applicant is presumed innocent until proved guilty and that he was committed for trial in September 2017 and that to date no hearing date has been fixed, the application for bail should not be granted for the charges against the applicant were grave and carried serious consequences with **Section 15 on The Trial Indictment Act** requiring the court to take into account the nature or gravity of the offence especially where there is a high likelihood of one absconding

Ms. Omara further submitted that the offence of terrorism involved violence and that the court should take judicial notice of the fact that there are a number of decided authorities that terrorism is a violent offence calls upon a court to take serious consideration involving such offences before considering the granting bail.

As regards the sureties presented, Ms Omara invited the court to look at their places of abode in relation to where the applicant resided and pointed out that while the applicant's proposed place of abode was in Butabika all the sureties presented save for one who is in Kawempe, Kampala resided elsewhere. She pointed out that surety 1 was a resident of Manafwa District and surety 2 and surety 4 were residents of Kibuku District. Thus she argued that because of the distance, the sureties would not be able to fulfil their duties as sureties and so should be found to not be substantial.

Finally, Ms. Omara also submitted that in the event that the court was inclined to grant bail, then the court should place stringent conditions on both the applicant and the sureties so as to ensure that the applicant report to court whenever required.

In rejoinder, Ms. Ebitu, submitted that the sureties who were presented were faultless and truthful and should be found substantial as they resided within the jurisdiction of this court.

In respect to the seriousness of the charges, Ms. Ebitu submitted the Constitution presumes an accused person innocent until found guilty or if one pleads guilty with this principle allowing court to grant bail to an accused person no matter the charges levied against such a person so long as an applicant demonstrates that the fact that he or she will report to the court for trial whenever needed with the prosecution's concerns only being cured through conditions set for bail which could be tailored to ensure that the applicant will be available whenever required.

In relation to the seriousness of the charges of the applicant, Ms. Ebitu informed the court that the applicant has spent two (2) years and four (4) months on remand with no trial yet set yet he had a right to a speedy trial and that the state should have prioritised his trial if it considered the offences against him serious but that since that has not been done the applicant is entitled to be released on bail while waiting for the state to be ready to try him.

In relation to objection by prosecution, that the sureties are not ordinarily resident in Kampala and cannot ably supervise the applicant, Ms. Ebitu contended that the 1st Surety was the biological mother of the applicant and was the best person to answer questions about his whereabouts even if she is a resident of Manafwa. That the 2nd surety and the 4th surety biological were sister and brother, respectively to the applicant with such close relationship to the

surety motivating them to ensure that the applicant attends his trial and was indeed an advantage to the prosecution because they would at all times know the whereabouts of the applicant.

Additionally Ms Ebitu submitted that 2nd surety was an employee of the government employed at Kibuku District Health Centre and was easily traceable; while the Surety No. 4 was an employee of Riani Medical Institution and is registered for NSSF at the same institution and also was easily traceable.

In regards to the sureties not being based in Kampala, Ms Ebitu submitted that the International Crimes Division, has a mandate for specific crimes and had unlimited jurisdictions throughout Uganda and as such the fact that some of the sureties were not based in Kampala should be ignored by court.

Having stated all the above, counsel for the applicant prayed to court that should it consider granting bail to the applicant, the financial conditions especially should be within the capacity of the applicant.

1. Decision:

The basic principle for which a court may release of an Applicant on bail is the presumption of innocence which is enshrined under **Article 28(3) (a) Constitution of the Republic of Uganda**. As has already been noted earlier, this Application was brought under **Articles 23(6) (a) of the Constitution of the Republic of Uganda** which provides;

“...where a person is arrested in respect of a Criminal Offence, he is entitled to apply to the Court to be released on bail and Court may grant that person bail on such conditions as Court considers reasonable*.”

Further, **Article 28 (3) (a) of the Constitution of the Republic of Uganda** provides that,

“...every person who is charged with a criminal offence shall be presumed innocent until proved guilty or until that person has pleaded guilty...”

This position is clarified by **Section 14 of the Trial on Indictment Act** which states;

“...a court may at any stage of the proceedings release the accused person on bail, 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*..’

In relation to the nature of offences, Ms. Omara objected to the bail application submitting that the applicant is faced with serious offences which also involve violence. However, this position was resolved in the case of ***Foundation for Human Rights Initiative* vs. Attorney* General Constitutional Petition No. 020 of 2006,*** where it was held that the nature of the offence, antecedents of the applicant and whether the applicant has a fixed place of abode in Court’s jurisdiction should be strongly considered by Court in an application for bail.

In the instant matter, I note that the applicant's place of abode is not in dispute and so I will not dwell on it.

However, as has already been stated above, it is indeed true that the Applicant is charged with the serious offences of aiding and abetting terrorism, belonging or professing to belong to a terrorist organization and rendering support to a terrorist organization all of which are offences are listed under the Anti-Terrorism Act and carry grave consequences upon conviction.

However, I note that the applicant has indeed been in custody without any hunch as to when he will be tried for these very serious offences and yet the constitutional presumption guaranteed to him is that he is innocent until proven guilty or where he pleads guilty, I would find that since the state has not found resources to have him tried as soon as possible. In the given circumstances, although these offences are of grave nature, I take cognizance of **Article 28 of the Constitution** which emphasizes the distinction between people who have been found guilty upon conviction by a court of law and those who are charged with criminal offences but are yet to be tried by a court of law. (*See: **Azamuke Patrick vs Uganda Miscellaneous Application No. 56/ 2015 arising out of Criminal Case No. 5/2012**). (Unreported)*

Furthermore, while I take note that Ms. Omara's objects to the fact that three of the Applicant's sureties do not reside in Kampala, I find that the Applicant's sureties do reside within the jurisdiction of this court and are sound and convincing looking at their close relationship with the applicant, I am satisfied that they will be able to ensure the Applicant attend to his trial whenever required this is coupled with the applicant proving that he has a fixed place of abode within the jurisdiction of this court.

In the premises therefore, I am inclined to grant the applicant bail but on the following very stiff conditions;

A: PRECONDITION TO GRANT OF BAIL:

As a **PRE-CONDITION** before the applicant can enjoy the bail terms set below, I do order the Officer in charge of the Police at the International Crimes Division together with the Senior State Attorney, (SSA) in charge of this case against the applicant and Counsel Sylvia Namaweje Ebitu to conduct a joint visit to the intended applicant's residence to ascertain its location and submit a detailed report including map to the Registrar of this court, to form, part of the record.

B: BAIL TERMS:

Upon the fulfilment of (1) above, The Applicant shall be released on bail on the following terms;

1. By taking from the Applicant, a recognizance consisting of **Uganda Shillings Five million only (UGX. 5,000,000/=) CASH.**
2. The Applicant to deposit his passport for safe custody with the Registrar of this court.
3. The Applicant will present his national identity card, certified copies of which shall be kept in his file by the Registrar of this court and another to be kept by the respondent.

4. The Applicant shall also deposit two (2) recently taken, black and white Passport size photos (One to be attached to the file and another to the prosecutor).
5. The Applicant shall deposit with the Registrar of this Court a certified copy of document of title in respect of his stated residence and home stated to be at Kirombe B Local Council I Butabika, Nakawa Division, Kampala District.
6. The Applicant to report to the Registrar of the International Crimes Division, in person, once every month commencing on 20th January 2020.
7. Each of the following approved Sureties, that is;
8. **Ms. Kaala Mukadisi Ndege**- Mother
9. **Ms. Nakyewa Haawa**- Sister
10. **Abu Hamza**- Friend
11. **Muloki Abu Rashid**- Brother
12. Shall deposit two passport size photographs with the Registrar of the International Crimes Division
13. Shall sign a non-cash bond of UGX. 5,000,000/= (Five Million Uganda Shillings only).
14. Any failure to adhere to these conditions shall render the bail terms indicated above to lapse with the applicant thereafter only again required to apply afresh for any opportunity to be granted bail, if any.
15. Any failure to adhere to any of the bail term conditions set above after the applicant is released on bail shall render bail granted to lapse resulting into an automatic issue of an Warrant of Arrest against the Applicant and the cancellation of his bail **IN ADDITION** to each sureties being required to pay to the state the non-cash bond of UGX. 5,000,000/= (Five Million Uganda Shillings only) indicated 8 (d) (i) above.

I do so order accordingly at the International Crimes Division of the High Court of Uganda, this 30th December, 2019

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HON. DR. JUSTICE HENRY PETER ADONYO

J U D G E

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