

UGANDA / JUDGMENT

Nduhukire v Uganda (Criminal Miscellaneous Application 39 of 2023)

[2023] UGHC 292 (23 October 2023)

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COURT

High Court of Uganda

BEFORE

Mugabo, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 39 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HIGH COURT CRIMINAL MISC APPLICATION NO. 039 OF 2023

(ARISING FROM HCT-01-CR-SC-0132-2023)

NDUHUKIRE WILSON ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

UGANDA :::::::::::::::::::::::::::::::::::RESPONDENT

BEFORE HON. MR. JUSTICE VINCENT EMMY MUGABO

RULING

Introduction

This is an application for bail by Notice of Motion under Article 23(6), 28(3) (a) and 139(1)) of the Constitution of the Republic of Uganda, Section 14(1) and 15 (4) of the Trial on Indictments Act and Rules 2 & 3 of the Criminal Procedure (Application) Rules. The applicant was charged with the offence of aggravated trafficking in children C/S 3(1)(b) and 5(a) of the Prevention of Trafficking in Persons Act 2009.

The grounds for this application are set in the affidavit of the applicant but, briefly, they are;

- a. The applicant was arrested in Bushenyi by police which brought him to Kasese Police Station where he was charged and arraigned at Kasese Court on allegations of child trafficking.
- b. Because of the above allegations, the applicant has since December 2022 been on remand at Katojo Prison.
- c. Before his arrest, the applicant was battling with Tuberculosis, a grave illness that has the potential to spread to other inmates.
- d. The prison in charge recommended the applicant go to a better facility for further management.
- e. This honourable court has jurisdiction to grant the bail application.
- f. That the applicant has no previous criminal record, and he is of good character, and well known to the local leaders where he is residing.
- g. That the applicant has a fixed place of abode at Rwenkuba Cell, Rutooma ward, Rwentuha Town Council in Bushenyi district where he stays with his family and that's where he can be traced if released on bail.
- h. That the applicant has substantial sureties who shall compel him to attend court whenever required.
- i. The applicant verily believes in his innocence and that he is constitutionally presumed to be innocent.

Representation and hearing.

The applicant is represented by Counsel Mishele Geofrey of M/S Bagyenda & Co. Advocates. The respondent is represented by Robert Arinaitwe, State Attorney. The respondent did not file a response to the application. Counsel for the applicant filed written submissions which I have considered herein.

Consideration by court

According to **Articles 23 (6) (a) and 28 (3) of the Constitution** of the Republic of Uganda, persons accused of criminal offences have a right to

apply for bail. However, the grant of bail is discretionary to the court (see *Uganda Vs Kiiza Besigye Const. Ref No. 20 OF 2005*).

Counsel for the applicant submitted that the applicant has a permanent place of residence and substantial sureties in the court's jurisdiction. These are;

- a. Tugabirwe Lovelyne, 36 years old, the applicant's wife. She is a resident of Rwenkuba Cell, Rutooma ward, Rwentuba Town Council in Bushenyi district. Her introduction letter, phone number and a copy of his National Identity Card have also been received on record.
- b. Tukamuhebwa Obed, 35 years of age and the applicant's cousin's brother. He is a resident of Kamulikwizi Cell, Nyamwamba Division, Kasese Municipality in Kasese District. His introduction letter, phone number and a copy of his National Identity Card have also been received on record.
- c. Nabaaza Naboth, 41 years of age and the applicant's friend. He is a resident of Nyabutobo Cell, Rutoma Ward, Rwentuha Town Council, in Bushenyi district. He is also the LC III chairperson of Rwentuha Town Council. His introduction letter, phone number and a copy of her National Identity Card have also been received on record.
- d. Mwesigye Edson, 40 years of age and a cousin brother to the applicant. He is a resident of Town Centre Cell, Town Centre Ward, Central Division, Kasese District. His introduction letter, phone number and a copy of his National Identity Card have also been received on record.

What would amount to a substantial or sufficient surety is quite relative, and would of necessity depend on the circumstances of each case. Odoki, B. J, in his book *"A Guide to Criminal Procedure in Uganda"*, LDC Publishers, 2006 (3rd Edition) at p.9 stated that:

"The court should inquire into the worth and social position of sureties. The sureties must have the means to answer for the sum involved (recognizance) and should be persons of some social standing in the community."

The role of sureties was explained by Hon. Lady Justice Florence Nakacwa **in the case of Sher Sign Shekhawat Vs Uganda Cri Misc App No 11 of 2023** quoting the **Halsbury's laws of England 4th Edition Vol Ii page 112-112 paragraph 166 thus:*

"The effect of granting bail is not to set the defendant free but to release him from the custody of the law and to entrust him to the sureties who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of the law and he will then be imprisoned unless he obtains fresh bail. A surety who believes that the principal is likely to break the condition as to his appearance may have him arrested by a constable."

I do take the foregoing parameters into account as I evaluate the substantiality of the sureties provided. Further, in my view, the over-riding consideration in an application such as the present one is that the terms of bail granted should be such as would ensure the grantee's compliance with the bond reporting terms as is implicit in section 14(1) of the TIA, as well as his/ her appearance for the substantive trial.

Although this court notes that the applicant has no permanent residence within the jurisdiction of the court, his home being in Bushenyi district, he has presented substantial sureties to guarantee that the applicant will attend his trial when called upon. The first surety is his wife with whom they stay together in Bushenyi district while the 3rd surety is the LC III chairperson of the Rwentuha Town Council where the applicant has a permanent residence. The 2nd and 4th sureties are cousin brothers who have permanent residence within the jurisdiction of this court.

There is no evidence presented to this court that there are other criminal charges pending against the applicant. I also note that he has been on remand since December 2022.

While considering an application for bail, Court is required by the **Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2021 Paragraph 12** to consider, among others, the following before granting bail; the gravity of the offence; the nature of the offence; the antecedents of the applicant so far as they are known; the possibility of a substantial delay of the trial; the applicant's age, physical and mental condition.

The applicant is charged with aggravated trafficking in children C/S 3(1)(b) and 5(a) of the Trafficking in Persons Act 2009, an offence which is by all standards grave. Nonetheless, I am cognizant of the fact that every person who is charged with a criminal offence is presumed to be innocent until proven guilty or until that person has pleaded guilty *(see Article 28(3)(a) of the Constitution of the Republic of Uganda 1995).*

The law stipulates that to be released on bail, the applicant must prove to the satisfaction of the court an exceptional circumstance (see **section 15(3)**

of the Trial on Indictments Act, *Florence Byabazaire vs Uganda HCMA No. 284 of 2006*.

Under **paragraph 14 (2) of the Constitution (Bail Guidelines For Courts Of Judicature) (Practice) Directions, 2022**, exceptional circumstances may include; *grave illness certified by a medical officer of the prison or other institution or place where the applicant is detained as being incapable of adequate medical treatment while the applicant is in custody*; a certificate of no objection signed by the Director of Public Prosecutions; and the infancy or advanced age of the applicant.

In the instant application, the applicant presented a medical report signed by the In-charge Mubuku Prison Health Centre II stating that the applicant has Tuberculosis with numbness on one side, visual complications, and metabolic disorders, and recommended that the applicant be taken to a better facility for further management *(see annexure A of the affidavit in support of the application)*. I am inclined to believe that the medical condition of the applicant presents an exceptional circumstance that justifies the grant of bail.

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Prepared on 12 October 2026 · Esheria