

UGANDA / JUDGMENT

Obaikol v Uganda (Criminal Miscellaneous Application 121 of 2024) [2025] UGHC 482 (30 June 2025)

[2025] UGHC 482

COURT
High Court of Uganda

BEFORE
Boniface Wamala, J

CASE / FILE NUMBER
Criminal Miscellaneous Application 121 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT SOROTI CRIMINAL
MISCELLANEOUS APPLICATION NO. 121 OF 2024 (Arising from Criminal Session
Case No. 0166-2023) OBAIKOL CHARLES ::::::::::::::::::::::::::::::: VERSUS

UGANDA !!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!! BEFORE: HON. JUSTICE BONIFACE WAMALA
RULING ON BAIL

Introduction

- [1] Obaikol Charles (the applicant) was charged with the offence of Rape contrary to sections 123 and 124 of the Penal Code Act [now sections 110 and 111 of the PCA Cap 128]. It was alleged that the applicant and others on 23rd April 2022 at Akworo Village in Serere District did have unlawful carnal knowledge of Alayo Everlyne without her consent. The applicant brought this application by Notice of Motion under Articles 23(6)(a) and 28(1) & (3) of the Constitution of the Republic of Uganda and sections 14 and 15 [now sections 15 & 16 of the Trial on Indictments Act, Cap 25 (TIA)] seeking an order for his release on bail pending trial by the High Court.
- [2] The grounds of the application are summarized in the Notice of Motion and also set out in the affidavit in support of the application deposed by the applicant. Briefly, the grounds are that the applicant was arrested on 23rd April 2022 and taken to Soroti Central Police Station where he was subsequently charged with the offence of Rape and remanded. He was committed to the High Court for trial on 20th September 2022 and further remanded to Soroti Government Prison. Ever since his committal, he has not yet

been cause listed for trial. He stated that he is innocent until proved guilty and has a right to apply to court to be released on bail pending trial. He further stated that the offence with which he is charged is bailable, he is a first time offender and has

presented four substantial sureties who understand their obligations to the Court. He also stated that at the time of his arrest, he had a permanent place of abode as stated in the affidavit and does not intend to change. He concluded that he will not abscond from the jurisdiction of the Court once released on bail and is ready and willing to abide by the terms and conditions set by the honorable Court.

- [3] The application was opposed through an affidavit in reply deposed by Mr. Okello Paul, a State Attorney C/O ODDP Soroti Office, who stated that although the applicant is presumed innocent until proven guilty and has a right to apply for bail, the discretion to grant bail remains a preserve of the Court. He stated that the offence of rape with which the applicant is charged is capital in nature and attracts a maximum penalty of death upon conviction; which fact is within the knowledge of the applicant and is most likely to influence his abscondment if released on bail. He further stated that due to the seriousness and sensitivity of the offence with which the applicant is charged, if released on bail, the applicant is likely to interfere with key prosecution witnesses who are well known to him and are not under any protection. He also stated that the applicant has not availed his national identity card but has attached a form of NIRA which is incomplete. He averred that the state is ready with its witnesses since the accused person has been committed for trial before the High Court. He finally averred that the applicant has not demonstrated any exceptional circumstances justifying his release on bail and it is in the interest of justice that the bail application is denied.

Representation and Hearing

- [4] The applicant was represented by Ms. Winnie Agwero from M/s Legal Aid Project of the Uganda Law Society while the respondent (State) was represented by Mr. Bamwesigye Emmanuel from the Office of the Director of Public Prosecutions (ODPP). The hearing proceeded by way of written submissions which were filed by both counsel and have been adopted and relied on by the Court.
- [5] The issue for determination by the Court is whether the applicant has established sufficient grounds for his release on bail.

Resolution by the Court

- [6] I will start by pointing out that bail is an agreement between the court and an applicant consisting of a bond, with or without surety, for a reasonable amount as the circumstances of the case permit, conditioned upon the applicant appearing before such a court on a date and time as named in the bond to attend his/her trial. See: Section 15(1) of the Trial on Indictments Act, Cap 25 and *Uganda v Lawrence Luzinda* 1986 (HCB) 33.

- [7] The foundational basis upon which the court is enjoined to exercise its discretion to allow or reject an application for bail is the presumption of innocence, based in law and particularly on Article 28(3)(a) of the Constitution. 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 to be innocent until proved guilty or until that person has pleaded guilty". This legal position is also based on Article 11(1) of the Universal Declaration of Human Rights and Article 14(2) of the International Covenant on Civil and Political Rights.
- [8] Under Article 23(6)(a) of the Constitution, it is provided that where a person is arrested in respect of a criminal offence, he/she 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. As such, the core aspects to be taken into consideration by the court when dealing with an application for bail are the presumption of innocence of an accused person, the right of the

accused person to apply for bail, and the discretion of the court to either grant or reject the bail application.

- [9] When exercising discretion to grant or refuse bail, the court is given further guidance through The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions 2022, which under paragraph 5 thereof sets out the following general principles to be taken into account by the court when considering a bail application, namely;
- a) the right of an applicant to be presumed innocent as provided for in article 28(3) of the Constitution;
 - b) the applicant's right to liberty as provided for in article 23 of the Constitution;
 - c) the applicant's obligation to attend trial;
 - d) the discretion of the court to grant bail on such terms and conditions as the court considers reasonable; and
 - e) the need to balance the rights of the applicant and the interest of justice.
- [10] Under Section 16(1) of the Trial on Indictments Act, the High Court may refuse to grant bail to any person charged with any of offences stipulated under Section 16(2), Rape being one of them, unless such applicant proves, to the satisfaction of the court, that he or she will not abscond when released on bail and that exceptional circumstances exist justifying his or her release on bail. However, under the law, an applicant for bail is no longer required mandatorily to plead or prove exceptional circumstances following the decision of the Constitutional Court in *Foundation for Human Rights Initiatives v Attorney General*, Constitutional Petition No. 20 of 2006 wherein it was held that it is no longer mandatory to prove exceptional circumstances given the fact that the courts have the discretion to grant bail even when none is proved. In **Uganda* v\$ Kizza Besigye*, Constitutional Reference No. 20 of 2005 the Court held that both "High Court and subordinate courts are still free to

exercise their discretion judicially and to impose reasonable conditions on the applicant" in an application for bail.

[11] On the case before me, the applicant's bail application has been opposed by the respondent on the following grounds;

- (i) The applicant is likely to abscond given the gravity of the offence and the fact that the sureties presented by the applicant are not substantial;
- (ii) The applicant is likely to interfere with key prosecution witnesses who are known to him and are not under any protection;
- (iii) The state is ready with its witnesses since the accused person has been committed for trial by the High Court; and
- (iv) It is in the interest of justice that the bail application is denied.

[12] Regarding the possibility of absconding the applicant if released on bail, it is provided for under *Section 16(4)* of the *TIA* 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 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 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 condition of his or her bail; and*
- *d) whether there are other charges pending against the accused.*

[13] On the evidence before me, it was shown the applicant that at the time of his arrest, he had a fixed place of abode at Angole village, Kyere Sub-County, Serere District. The applicant produced a copy of his National Identity Card Registration form and a letter from his area L. C1 Chairperson. Although counsel for the respondent argued that the form was incomplete, I have looked

at and found that the details of the father match with those on the national ID presented by his father. I am satisfied that the documents produced by the applicant prove that he had a fixed place of abode in the area where he resided before his arrest.

[14] Concerning the sureties, Paragraph 15 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, sets out the determinants on the suitability of a surety as follows;

"Determining suitability of surety

- 1) When considering the suitability of a surety, the court shall take into account the following factors;
- *a) the age of the surety;*
- *b) work and residential 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".

[15] In sub-paragraph (2) of paragraph 15 of the Bail Guidelines, it is provided that the proposed surety shall provide documentary proof, which may include a copy of his or her National Identity Card, passport or alien's Identification Card; an introduction letter from the local council 1 chairperson of the area where the surety is ordinarily resident, among others.

[16] In the present case, the applicant produced three sureties who were identified and observed by the Court namely; Ajaru Michael, the applicant's father; Eyau Simon, a father in law to the applicant; and Elibu Julius, a brother to the applicant. The sureties presented their National Identity Cards and introductory letters from their respective LC.1 Chairpersons. It has been proved that the sureties have fixed places of bode and their relationship with

the applicant has been well established. I have found the applicant's sureties to be substantial.

[17] The other ground of objection to the application was that due to the seriousness of the offence with the applicant is charged, the applicant is likely to interfere with key prosecution witnesses who are well known to him and are currently under no protection. For the court to arrive at a conclusion as to whether or not an applicant for bail is likely to interfere with witnesses, the court has to look at a number of circumstances including the nature of the offence, the age of the applicant, how long the applicant has been on remand, how influential the applicant is in the community, among others.

[18] On the case before me, it is true as stated by counsel for the respondent that the likely witnesses in this case are resident within the same locality as the applicant, they are well known to the applicant and they are not under any protection. Given the gravity of the offence and the age of the applicant, I find a strong possibility that the applicant will interfere with witnesses in the matter. I therefore find this ground of objection made out by the respondent.

[19] In the circumstances, the applicant has not satisfied the Court that he deserves to be released on bail. The interest of justice dictates that the bail application by the applicant be denied. Accordingly, the application for bail is dismissed. The applicant shall await placing of his case on session for hearing. - It is so ordered.

Dated and signed this 30th day of June, 2025.

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Boniface Wamala JUDGE

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