

UGANDA / JUDGMENT

Ocuka v Uganda (Criminal Miscellaneous Application 25 of 2021) [2023] UGHCCRD 48 (23 August 2023) [2023] UGHCCRD 48

COURT

HC: Criminal Division (Uganda)

BEFORE

Adonyo, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 25 of 2021

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The Republic of Uganda

In The High Court of Uganda in Soroti

Miscellaneous Application No. 0025 of 2021

(Arising from DPP Case No. 015/2018 Police Case No. KUMI CRB 706/18)

Ocuka Max :::::::::::::::::::: 10 <pre>.....

Versus

Uganda :::::::::::::::::::: <pre>.....

Before: <u>Hon. Justice Dr Henry Peter Adonyo</u>**Application for Bail:****Ruling****1. <u>Introduction</u>:**

This is an application brought by way of notice of motion under Articles 2(1), 23(6)(a) & 28 (1)(3) of the Constitution of Uganda 1995 and Sections 14 and 15(1)(b)(c) of the Trial on Indictment Act Cap. 23 for orders that this honourable court has discretion to grant the applicant bail.

The grounds of the application as set out in the application and supporting affidavit briefly are that the applicant is charged with murder c/s 188 and 189 of the Penal Code Act and the applicant's constitutional right to a speedy trial has been violated while he is presumed innocent until proven guilty.

State Attorney Emasu Michael in his affidavit objecting to the application, stated that given the nature of the offence the accused is most likely to abscond in fear of the severe sentence upon conviction. That the applicant

has no justifiable reason for grant of bail and he has not presented any 30 substantial sureties.

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The submissions by counsel for the applicant M/s Ogire and Co. Advocates 5 have been read and duly considered.

2. The Law on Bail Pending Trial:

The law applicable to bail is settled in the case of Uganda (DPP) Vs. Col (RTD) Dr. Kiiza Besigye, Constitution reference No. 20 of 2005. The accused has the right to apply to court to be released on bail and the court has the discretion whether to grant bail under Article 23 (6) (a) of the Constitution of Uganda, 1995 which provides that;

Where a person is arrested in respect of a criminal offence—

(a) 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 15 reasonable;

Capital offences such as murder in this instance are bailable, however, whether the court is inclined to exercise the discretion to grant or not is a matter depending on the circumstances of each case.

Section 14(1) of the Trial on Indictment Act amplifies Article 23(6)(a) of the 20 Constitution thus;

> (1) 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 recognisance 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.

The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 under paragraph 5 provide for the general principles applicable in the consideration of a bail application thus;

The court shall, in considering a bail application, be guided by the following $\$S\$\$$ principles as enshrined in the Constitution—

- (a) the right of an applicant to be presumed innocent as provided for in article 28(3)(a) of the Constitution;
- (b) the applicant's right to liberty as provided for in article 23 of the Constitution; 10
- (c) the applicant's obligation to attend trial;
- (d) the discretion of 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 interests of justice.

Having exhausted above the legal provisions as regard bail, I will now turn to the merits of this application.

Section 15(1) of the Trial on Indictment Act provides thus:

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— 20

> (a) that exceptional circumstances exist justifying his or her release on bail; and

(b) that he or she will not abscond when released on bail."

In this section, "exceptional circumstances" means any of the following—(a)

grave illness certified by a medical officer of the prison or other institution 25 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.

Section 15(4) provides; 30

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 the accused shall comply with the conditions of his or her bail; 10
- (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 pending against the accused.

a. Fixed place of abode:

The applicant under paragraph 10 of his affidavit states that he is a permanent resident of Odeidei village, Omerein parish, Mukongoro sub county in Kumi District. However, no introduction letter from the LC1 of this area was attached to the application, without this fixed place of abode has not been proved.

The essence of a fixed place of abode is traceability of an accused in the event of abscondment or whenever necessary. Section 15(4) (a) of the Trial on Indictment Act provides that in considering whether an accused is likely

- to abscond court may take into consideration whether the applicant has a 25 fixed place of abode within the jurisdiction of the court. This is amplified by paragraph 13(k) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions. While the Law does not define the phrase 'fixed place of abode' what is important is that the fixed place of abode
- must be within the jurisdiction of the court considering the bail application. 30

Where the applicant fails to prove this under section 15(1) of the TIA the 5 court may deny him bail.

I find that this ground has not been proved.

b. Substantial Sureties:

Under paragraph 11 of his affidavit the applicant presents 2 sureties to wit Okia Kesron his brother and Ogwapit Samuel his brother both residents of 10 Odeidei village, Omerein parish, Mukongoro sub county in Kumi District. However, just like the applicant their identities and fixed places of abode were not proved through attachment of copies of their national IDs or letters of introduction from the Lc1 Chairperson of this area.

Section 15(4)(b) of the Trial on Indictment Act and paragraph 13 (I) of the 15 Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, provide that in considering whether an accused is likely to abscond the court shall consider whether the accused has sound sureties within the jurisdiction to undertake that the accused shall comply with the conditions

of his or her bail. 20

Paragraph 15 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions provides for determinants on the suitability of a surety thus;

- (1) When considering the suitability of a surety, the court shall take into
- account the following factors— 25
- (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. 30
- (2) Subject to sub-paragraph (1) the proposed surety shall provide $\$S$ documentary proof including—
- (a) a copy of his or her national identity card, passport or aliens' identification card;
 - (b) an introduction letter from the Local Council 1 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.

Without proof of identity and fixed place of abode, I find that the sureties are not substantial.

- Ideally, an accused person should be granted bail if he or she fulfils the set 15 conditions for his release such as fixed place of abode and sound sureties, however in the instant case the applicant has not proved a fixed place of abode or has provided sound sureties and so I am unable to exercise discretion to grant him bail.
- This application is accordingly dismissed. The applicant may file another 20 application once he has obtained the necessary documents proving fixed place of abode and sound sureties.

I so order.

Hon. Justice Dr Henry Peter Adonyo Judge 23rd August 2023

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