

UGANDA / JUDGMENT

Okanya v Uganda (Criminal Misc. Application No. 16 of 2016) [2016] UGHCCRD 134 (5 October 2016)

[2016] UGHCCRD 134

COURT

HC: Criminal Division (Uganda)

BEFORE

Luswata, J

CASE / FILE NUMBER

Criminal Misc. Application No. 16 of 2016

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CRIMINAL MISC. APPLICATION NO. 16 OF 2016

OKANYA ZAKAYO BENGU..... APPLICANT

VERSUS

UGANDA.....RESPONDENT

RULING

BEFORE: HON. LADY JUSTICE EVA K. LUSWATA

The applicant presented this application under **Article 23[6][a] of the Constitution of the Republic of Uganda 1995** and **Section 14 of the Trial on Indictment Act [TIA]**, for an order to be released on bail pending his trial and costs of the application to be provided. He relied on the following summarized grounds:-

- [1] He was arrested on 23/1/14 and subsequently charged with the offence of murder which is bailable by this Court. He has remained on remand since that date.
- [2] He has a constitutional right to be released on bail.
- [3] He has a permanent place of abode within the jurisdiction of court and has substantial sureties who will guarantee his attendance to stand trial.
- [5] He will abide by any terms set for bail.

The above grounds were substantiated in the applicant's two affidavits in support of the application in which he gave his address of abode to be Bulimira Zone A Village, Bwiza Parish, Namasagali Sub County in Kamuli District within the jurisdiction of the Court. He stated that he had spent a total period of two years and seven months in different detention centres without trial and added that at the time of arrest, he was married with four children then all minors who are now unable to attend school since he was the sole bread earner of his family. He presented two sureties that he regarded substantial for the purpose, to wit:-

- [1] **BENENEGO OKIA** aged 51 years, peasant and father of the applicant, resident of Bulimira A Village, Bwiza Parish, Namasagali Sub County, Kamuli District and holder of National ID No. 007057097 and Tel No. 0759035354.
- [2] **MUSANA BROGAN ESITASIO**, aged 60, retired civil servant of the Uganda Railways Corporation. Maternal uncle of the applicant and resident of Bwiza Parish, Namasagali Sub County, Kamuli District and holder of National ID No. 0077057005 and Tel No. 0782673451.

Counsel Asimwe in support of the application argued that it is within the discretion of the Court to grant or refuse bail but that the applicant had satisfied the conditions for bail by presenting substantial sureties and a fixed place of abode. He reiterated the applicant's averments that he will not abscond if released.

In her submissions in reply, Ms Nalule for the respondent, requested the Court to adopt the affidavit filed in reply and added that she doubted the authenticity of the the LC letters stated to be prepared by one Ojeke Karrim purporting to be an LC, but with no proof to that effect. She also asserted that the applicant has already been committed for trial and the prosecution is ready to prosecute the case. She challenged the applicant to show that he will not abscond and argued that no special circumstances were provided as required by law. She conceded that if bail is granted, then it must be with stringent conditions attached.

The right to bail is enshrined in Article 23[6][a] of the **Constitution**, and I do agree with counsel Nalule that multiple applications for bail will not automatically entitle one to be released on bail. The application is based on **Section 14** of the Trial on Indictments Act and no special circumstances have been presented for the release of the applicant. That provision has previously been held not to be mandatory, for Courts have found it more important for an applicant to convince Court that they will attend their trial once released. It is important therefore that the applicant confirms his fixed place of abode and presents sound sureties who will ensure his attendance in court, and who can be called upon in the event he absconds.

I have seen the documents supporting the sureties presented and, they appear to be satisfactory. The sureties close relationship to the accused is indicative of their knowledge of his movements and should be capable of ensuring his attendance at trial. The claim by respondent's counsel that the author of the LC recommendations ought to have sworn an affidavit as well, is not backed by authority and as counsel for the applicant stated, she had ample time to carry out a background check of that person and other matters.

Again, the requirement for the accused to have a fixed place of abode within the jurisdiction of court is equally, important because, in this case, it is he and not his sureties who should be present to answer the charge. The applicant's address given is certain and within the jurisdiction Court and in close proximity to the sureties.

I am aware that the applicant is charged with a serious offence but this should not outweigh his right to supervised liberty during his trial.

Upon my observations above, I am convinced that the applicant will appear to stand trial if released on bail and the application is accordingly granted on the following conditions;

- [1] Release on a cash bail of Shs. 3,000,000/= as cognizance of the applicant's release on bail.
- [2] Each surety is bound on a non cash bail of Shs. 5,000,000 each.
- [3] The applicant will during the pendance of his trial report to the Registrar of the court once every month, commencing on 6th November, 2016.
- [4] Non observance of the above terms will result into the bail being cancelled.

I so order.

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EVA K. LUSWATA

JUDGE

05/10/16

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