

UGANDA / JUDGMENT

Okwero v Uganda (Miscellaneous Criminal Application 115 of 2024)
[2024] UGHC 1078 (2 December 2024)
[2024] UGHC 1078

COURT
High Court of Uganda

BEFORE
Boniface Wamala, J

CASE / FILE NUMBER
Miscellaneous Criminal Application 115 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT SOROTI

MISCELLANEOUS CRIMINAL APPLICATION NO. 115 OF 2024 (Arising from
Kaberamaido Criminal Case No. KBD-AA-18-2024) OKWERO
SAMUEL ::::::::::::::::::::::::::::::

VERSUS

UGANDA ::::::::::::::::::::::::::::::

BEFORE: HON. JUSTICE BONIFACE WAMALA RULING ON BAIL

Introduction

- [1] Okwero Samuel (the applicant) was charged with the offence of Murder contrary to sections 171 & 172 of the Penal Code Act (PCA), Cap 128. It was alleged that the applicant and others still at large on 20th day of July 2024 at Agwaya Village, Kakure Parish, Kakure Sub-county in Kalaki District with malice aforethought unlawfully caused the death of Edyomu Joel.
- [2] The applicant brought this application by Notice of Motion under Articles 20(2), 23(6)(a) and 28(1) & (3) of the Constitution of the Republic of Uganda and Section 14(1) [now section 15(1)] of the Trial on Indictments Act, Cap 25 (TIA) seeking for an order that the applicant be released on bail pending trial by the Court.

- [3] 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, detained and remanded in Kaberamaido Government Prison. The applicant stated that he is the bread winner of the family with a wife, 9 children and 7 dependants who are suffering in his absence. He averred that he will not interfere with any

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investigations or witnesses and will not abscond when released on bail. He has presented three substantial sureties who fully understand the duties and responsibilities of a surety and are willing to undertake the conditions set by the Court. He has a permanent place of abode as indicated in the affidavit in support. He concluded that it is in the interest of justice that the application be granted.

- [3] The respondent did not file an affidavit in opposition to the application despite service of court process and further direction by the Court to file their replies when counsel appeared for the hearing. The court therefore allowed the hearing to proceed ex parte.

Representation and Hearing

- [4] The applicant was represented by **Mr. Engwau George** from **M/s Engwau & Co. Advocates**. while the respondent (State) was represented by **Mr. Okello Paul** who appeared on brief for **Mr. Bamwesigye Emmanuel** from the Office of the Director of Public Prosecutions (ODPP). The hearing proceeded by way of written submissions. However only counsel for the applicant filed their written submissions which 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), Murder 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, although the applicant's bail application has not been opposed by the respondent, the applicant has to satisfy the Court that he will not abscond from bail and is not likely to interfere with key prosecution witnesses, among other conditions. Regarding the possibility of abscondment by 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.*
- [12] On the evidence before me, it was shown by the applicant that he has a fixed place of abode at Auwa Village, Kakure Parish, Kakure Sub-county in Kalaki District. The applicant produced a copy of his National Identity Card and a letter from the area L. C 1 Chairperson. I find the above sufficient to prove that the applicant has a fixed place of abode in the area where he resided before his arrest.
- [13] Concerning the sureties, the applicant produced three sureties who were identified and observed by the Court, namely, Soigi Angela Asanasi, an elder sister to the applicant; Obuya William, an uncle to the applicant; and Edweu Charles, a clan brother. The three sureties produced their national identity cards and introductory letters from their area LC1 chairpersons which were viewed by the Court. Their relationship with the applicant was also not contested. They are permanent residents within the court's jurisdiction and are traceable in case the court requires their presence. As such, I would find that the sureties produced by the applicant are substantial. The only reason I am not satisfied that the applicant will not abscond when released on bail is the gravity of the offence and the severity of the likely punishment in the event of being convicted. Therefore, although the applicant has satisfied the Court that he has a fixed place of abode and that the sureties presented by him could be substantial, I am not satisfied that the accused will not abscond when released on bail on account of fear of the consequences if he were to be convicted upon trial.
- [14] The court also has to be satisfied that the applicant is not likely to interfere with key state witnesses. For the court to arrive at a conclusion as to whether or not an applicant for bail is likely to interfere with witnesses or not, 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. In this case, given the gravity of the offence and the age of the applicant, I find nothing to satisfy

me that the applicant will not interfere with the witnesses in the matter. This is especially so given that the applicant has not yet been committed to the High Court; implying that investigations are still on-going. The applicant has not yet clocked the mandatory remand period. A potential threat of interfering with investigations and witnesses therefore exists and, on this ground as well, the application for bail would fail.

- [15] In light of the above findings, I find that the applicant has failed to satisfy the Court that he is entitled to be released on bail given the circumstances set out herein above. The interest of justice therefore dictates that the bail application by the applicant be denied. Accordingly, the application for bail is dismissed. The applicant shall await his committal and cause listing on session for hearing.

It is so ordered.

Dated and signed this 2nd day of December, 2024.

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Boniface Wamala

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Prepared on 14 October 2026 · Esheria