

UGANDA / JUDGMENT

Olobo v Uganda (Criminal
Miscellaneous Application 27 of
2023) [2024] UGHC 526 (3 May 2024)
[2024] UGHC 526

COURT

High Court of Uganda

BEFORE

Adonyo, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 27 of 2023

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The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Criminal Miscellaneous Application No. 27 of 2023

(Arising from Court Case No. 21 of 2022)

Olobo James ::::::::::: 10 <pre>.....

Versus

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Uganda :::::::::::

Before: <u>Hon. Justice Dr Henry Peter Adonyo</u>

Ruling

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1. Background:

Opio Patrick, Ausi Stephen Alias Simple, Oluka John Peter, Qchom Ibrahim, Epiu Denis Alias Engecu, Olobo James (the applicant) and others still at large were charged with two counts of criminal offences.

In the first count, the six named persons above and others still at large were charged with 20 the offence of Aggravated Robbery contrary to Sections 285 and 286 of the Penal Code Act (PCA).

The particulars of the offence are that Opio Patrick, Ausi Stephen Alias Simple, Oluka John Peter, Qchom Ibrahim, Epiu Denis Alias Engecu, Olobo James (the applicant) and others

still at large on the night of 08th September 2022 at Kaloko village in Bukedea district 25 robbed one Opolot Stephen of his motorcycle REG No. UFL 023P and at or immediately

before or immediately after the said robbery used deadly weapons, to wit, a panga and \$ \mathsf{S} \\$ knives on the said Opolot Stephen.

In the second count, the six named persons above and others still at large were charged with the offence of Murder contrary to Sections 188 and 189 of the Penal Code Act, Cap. 120, the particulars of the offence are are that Opio Patrick, Ausi Stephen Alias Simple,

- Oluka John Peter, Qchom Ibrahim, Epiu Denis Alias Engecu, Olobo James (the applicant) 10 and others still at large on the night of 8th September 2022 at Kaloko village in Bukedea district with malice afore thought unlawfully killed Opolot Stephen.
- 2. Legal basis of the Application:

The application is by way of a Notice of Motion and is brought under Articles 23(6) (a) and

- 28(1)(3)(a) of the Constitution of the Republic of Uganda, 1995, (the Constitution), and 15 Sections 14 and 15 of the Trial on Indictments Act, Cap 23 (TIA), for orders that the applicant who is now on remand at Kumi Government prison be released on bail pending his trial upon conditions as this Honourable Court shall deem fit.
- 3. Grounds of the Application:
- The application hinges upon a number of grounds which are stated in the application and 20 enhanced in its supporting affidavit sworn by the applicant. These are that;
- a) The applicant was charged with two counts of aggravated robbery contrary to sections 285 and 286 and murder contrary to sections 188 and 185 of the Penal Code Act, Cap.120, and he has been in custody since September 2022 when he was remanded to Kumi Government prison by the Chief Magistrate's Court of Kumi at Kumi.
- b) It is the applicant's constitutional right to apply for release on bail at the discretion of this Honourable Court.
- c) The applicant has a permanent place of abode at Odubai village, Anyalam parish, Ocheru sub-county, Kaberamaido district, within the jurisdiction of this Honourable Court.
- d) The applicant has two substantial sureties whose particulars are provided in the application.

- e) The applicant has no negative antecedents whatsoever and no other charges are pending against the applicant.
- f) Although the applicant has been committed for trial in the High Court, it is unknown when the trial will occur. Thus, his stay in custody is for an uncertain period.
- g) The applicant is presumed innocent until proven guilty.
- h) The applicant is likely to be acquitted of the indictment because he (A6) in the indictment innocently and/or unknowingly later bought the robbed motorcycle the property of the victim from A1, A2, A3 and A4 at Kaberamaido.
- i) The applicant will not interfere with the state witnesses whom he does not know.
- j) The applicant is a law-abiding citizen, ready and willing to abide by the bail conditions set by the Court.
- k) The applicant will attend his trial as and when the Court commands him to.
- 4. Affidavit in reply:
- The respondent objected to the instant application through an affidavit in reply sworn by Bamwesigye Emmanuel, a State Attorney c/o ODPP - Soroti office, who, but for brevity, stated that;
- a) The applicant is charged with two offences of murder and aggravated robbery, which attract a maximum penalty of death upon conviction. Thus, the applicant is most likely to abscond bail in fear of the severe sentence upon conviction.

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- b) Though the applicant has a constitutional right to apply for bail, the right to grant bail remains a preserve of this Honorable Court to which the respondent prays that bail be denied.
- c) The prosecution is ready with its witnesses to proceed at any time if this case is scheduled for hearing. The application is intended to delay the hearing of the case.
- d) The applicant will likely interfere with prosecution witnesses if released on bail because those witnesses are in the locality of the accused's area.
- e) The release of the accused person will not only intimidate the witnesses but will compromise the said witnesses which will gravely affect the prosecution case.
- f) Both sureties presented by the applicant are not substantial due to their weak social standing because they are peasants; hence, there is a high likelihood that they will not be able to ensure that the applicants attend court when required to do so.

- g) The surety, Anyinge Norah, provided a telephone Number 0772323955 as hers, yet it is not registered in her name but in the names of a one David Alip. Hence, it is highly likely that it will be difficult to trace the surety in case the applicant absconds.
- h) The respondent has noted all the recommendation letters which purport that the applicant and his sureties are residents in those given areas. However, no documentary proof, such as land title and rent payments, has been availed to support the claim and, thus, has failed to prove that they have fixed places of abode within the jurisdiction of this Honorable Court and, hence, not substantial sureties.
- i) The respondent verily believes that this Honorable Court is taking considerable measures to ensure that the committed accused person is cause-listed for trial

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- as soon as possible, and there is no need to dwell on uncertainties of when the case shall be heard.
- j) It is in the interest of justice that this application be denied and the case be fixed for hearing.
- 5. Submissions:
- The applicant, through M/s Ewatu & Co. Advocates, and the respondent through the ODPP 10 -Soroti office, filed written submissions arguing this application, which I have considered together with the application, the supporting affidavits, the attached documents, relevant legal authorities, and the applicable laws while determining this application.
- 4. Decision:
- The presumption of innocence is the primary principle for which a court may, in the 15 exercise of its discretion, release an accused person on bail pending trial as Article 28(3)(a) of the Constitution of the Republic of Uganda, 1995) 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.

Article 23(6)(a) of the Constitution of the Republic of Uganda provides that: 20

Where a person is arrested in respect of a Criminal Offence, he 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.

In his affidavit, the applicant conceded that it was at the Honourable Court's discretion to release him on bail pending trial. He also alluded to his right to apply for bail. Because, it is 25 his constitutional right to apply for bail, the applicant's averment is aligned with Article 23(6)(a) of the Constitution.

Capital offences such as murder and aggravated robbery as is the offences against which the applicant stands charged before this Hon. Court are bailable. However, whether the

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court is inclined to exercise the discretion to grant or not is a matter dependent on the $\mathbf{S}$ circumstances of each case and the evidence adduced guaranteeing the applicant's return to the court to attend the trial.

Section 14(1) of the Trial on Indictments Act, Cap 23 stipulates the standpoint outlined in Article 23(6)(a) of the Constitution. It underpins the legitimate fact that this Honourable

- Court has discretion of whether or not to release an accused person such as the applicant 10, at any stage of the criminal proceedings, 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 15 paragraph 5, provides the general principles in consideration of a bail application thus:
- 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 the 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.

The above constitutes the legal provisions to be considered in an application for bail and having properly pointed out the same, I will now turn to the merits or not of this 25 application.

Under Section 15(1) of the Trial on Indictments Act, a court may refuse to grant bail to persons charged with offences such as murder unless such applicant proves, to the

satisfaction of the court, that he or she will not abscond when released on bail and that $\mathbf{S}$ exceptional circumstances do exist justifying his or her release.

The applicant, in his affidavit in support of the application, does not plead and has not proved exceptional circumstances.

Proof of exceptional circumstances according to the case of *Foundation for Human Rights Initiatives v Attorney General* (Constitutional Petition No. 20 of 2006) [2008] is not mandatory and it was reconfirmed in the case of *Uganda vs Kizza Besigye* Constitutional Reference No. 20 of 2005 that;

> "Both High Court and subordinate courts are still free to exercise their discretion judicially and to impose reasonable conditions on the applicant."

The above being so therefore, I would turn to the provisions of Section 15(4) of the TIA in 15 relations to the considerations which a court must take into account when considering a bail application and these are;

Section 15(4) of the TIA :

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;
- (c) Whether the accused has on 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.

Accordingly, in deciding whether to grant or not to grant bail to the applicant, this Honourable court must be satisfied that the applicant has clearly demonstrated his

compliance with the legal fundamentals as provided for in Section 15(4) of the TIA for \$ \mathsf{S} \$ which bail may be granted and these are considered below individually.

a) Fixed place of abode:

In his affidavit supporting his application, the applicant states that he has a fixed place of abode in Odubai village, Anyalam parish, Ocheru sub-county, Kaberamaido district which he states is within the jurisdiction of this Honourable Court.

On the other hand, the respondent in its affidavit in reply, contends that the applicant has not proved that he has a fixed place of abode within the jurisdiction of this court because he had not annexed any documentary proof such as land title and rent payments, to support his claim.

Section 15(4) (a) of the Trial on Indictments Act buttresses the fact that proof of a fixed place of abode is one of the determinants as to whether the applicant is likely to abscond once granted bail with any failure of proving so rendering an application for bail unresponsive and thus can be denied.

The above provision of the law is augmented by paragraph 13(k) of the Constitution (Bail

Guidelines for Courts of Judicature) (Practice) Directions. 20

While I take cognizance of the fact that the law does not define the phrase "a fixed place *of abode*", my interpretation of the same is that a fixed place of abode ordinarily must be such a place that is situated within the jurisdiction of the court which is considering a bail application. Where that is proved then that would mean that the applicant is traceable and

is most likely not going to abscond his trial in addition to easily attending court whenever 25 required.

From this application, the applicant avers that he has a fixed place of abode. This averment is proven by the particulars as are seen in an annexed copy of his National Identity Card "C" which upon examination aligns with annexure "B" attached to his application which

an LC1 letter with both documents confirming that the applicant indeed comes from \$ \mathsf{S} \$ Odubai village, Anyalam parish, Ocheru sub-county, Kaberamaido district which is within the jurisdiction of this Honourable Court.

That fact being in sync with the law, I would disagree with the respondent's contention that the applicant has not proved that he has a fixed place of abode within the jurisdiction of this court on the basis that he had not annexed any documentary proof such as land title and rent payments in support to his bail application. The assertion of the respondent in this respect is not provided for by the law. This ground thus succeeds.

b) Proposed sureties:

The applicant, through his application has provided the names and particulars of to persons wh he proposes to stand surety for him. The particulars of the proposed sureties 15 as disclosed are:

- 1) Anyinge Norah, 54 years, a resident of Odubai village, Anyalam parish, Ocheru sub-county in Kaberamaido district, a peasant farmer, the applicant's mother, Tel No. 0772323955, holding voters' card personal ID No. CF690541014TQF, and a letter from the area LC1 dated 25th May 2023 – photocopies of which are annexed as "D" and "E" respectively.
- 2) Etayu Simon, 40 years old, a resident of Abongomon "A" village, Akwalakwala parish, Kobulubulu sub-county in Kaberamaido district, a peasant farmer, the applicant's elder brother, tel. No. 0772248828, holding voters card personal ID No. CM83054102PTEC and a letter from the area LC1 dated 26/05/2023, of which photocopies were annexed as "F" and "G", respectively.

In its affidavit in rebuttal to this application, the respondent contended that the applicant's proposed sureties were not substantial as both named persons were of weak social

standing being peasants and hence there is a high likelihood that they will not be able to \$ \mathsf{S} \$ ensure that the applicants attend court when required to do so.

Further, that while one of the proposed sureties called Anyinge Norah provided a telephone number 0772323955 as hers, that telephone number is not registered in her name but in the names of one David Alip making it difficult to believe that she can be traced

using the said telephone number in case the applicant absconds. 10

Furthermore, the respondent noted all the recommendation letters which purport that the applicant and his sureties are residents in those given areas are not supported by any other documentary proof such as land title and or rent payments to support the claim, meaning that the applicant has failed to prove that his proposed sureties have fixed places of abode within the jurisdiction of this Honorable Court and thus substantial sureties.

Relating the above to the instant matter, I will consider the legal position in regard to sureties as well as the determinants for the grant of bail.

As for the term "surety", it is defined under Paragraph 4 of the Constitution (Bail Guidelines for Courts of Judicature) Practice Directions to mean a person who undertakes to ensure

that the applicant will appear in court and abide by the bail conditions and who furnishes 20 security which may be forfeited to State if the applicant fails to appear in court.

Still, Section 15 (4)(b) of the Trial on Indictment Act and paragraph 13(1) (I) of the 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.

The determinants as to the suitability of a surety are found in Paragraph 15 of the Constitution (Bail Guidelines for Courts of Judicature) Practice Directions which provides thus;

- (1) When considering the suitability of a surety, the court shall take into
- (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.
- (2) Subject to sub-paragraph (1) the proposed surety shall provide documentary proof, including-
- (a) A copy of his or her national identity card, passport or alien's 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.

Relating the above legal requirements to the instant application, I note that the applicant has disclosed his relationship to the proposed sureties, their ages and their status in life as

- peasants and has equally ensured that the proposed sureties copies of their National 20 Identification documents are annexed to his application as Annexures "D" and "F" together with their respective local council chairpersons' introductory letters which are Annexures "E" and "G" which I have carefully examined. The annexed documents clearly convey information related to the places of abode of the sureties and upon for Etayu Simon, the
- residence aligns with the provided annexures. 25

On the other hand, while the other proposed surety called Anyinge Norahdocuments are at variance given the fact that though in the applicant in his affidavit in support of this application it is disclosed that her residence is at Odubai village, Anyalam parish, Ocheru sub-county in Kaberamaido district while Annexure "D" shows her residence as being at Ogwalowo village, Akwalakwala parish, Kobulubulu sub-county in Kaberamaido district.

That variance, however, is seen as minor as I am satisfied that Annexure "D", which is a

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letter from the area LC1 properly discloses the place of residence of the surety and is still \$ \mathsf{S}\$ within the jurisdiction of this Honourable Court.

That fact being so, I would disagree with the respondent's contention that the applicant has not proved that his surties have fixed places of abode which are within the jurisdiction of this court on the basis that they had not annexed any documentary proof such as land

title and or rent payments in support to the bail application. That assertion by the 10 respondent though solid is not provided for by any known law and thus cannot be used in a court of law as as condition for consideration of a bail application.

Consequently, given the fact that the proposed sureties are the applicant's mother and elder brother, respectively, im inclined to consider that by those facts they manifests

authority and superiority over the applicant and are thus able to assure this Honourable 15 Court that they are capable of and will ensure that the applicant attends his trial to its logical conclusion by abiding to any terms and conditions of the release on bail that may be imposed by this court.

For that reason, I find the the proposed sureties sound and substantial. This condidtion is thus succeeds.

5. Conclusion:

From the conclusions made above, I am persuaded that this is a case where the grant of bail is merited and that the doing so will not subvert the cause of justice given the substantiality of the sureties and the clear proof that the applicant has a permanent place

of resident within the jurisdiction of this court. 25

> Accordingly, bail is thus granted to the applicant pending the trial of the case against him upon the conditions set below which takes into account the nature of the offence he is charged with.

The applicant is granted bail under the following conditions:

- a) The applicant is to deposit a Cash bond of Shs. 2,000,000/=
- b) Each of the two sureties presented is bound in the sum of Shs10,000,000 not cash.
- c) The applicant and each of his sureties are to provide a recent photograph, telephone numbers and copies of national IDs to the Registrar of this court and the Chief Resident State Attorney, Soroti, for filing and record purposes.
- d) The Applicant to report to the Registrar of this Court once a month on the first Friday of each month with effect from the 7th of June 2024 until otherwise directed by court.

I so order.

Hon. Dr. Justice Henry Peter Adonyo Judge 3rd day of May 2024.

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