

UGANDA / JUDGMENT

Olokotum and 5 Others v Uganda (Criminal Miscellaneous Application 109 of 2024)

[2024] UGHC 1081 (2 December 2024)

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COURT
High Court of Uganda

BEFORE
Boniface Wamala, J

CASE / FILE NUMBER
Criminal Miscellaneous Application 109 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT SOROTI
MISCELLANEOUS CRIMINAL APPLICATION NO. 109 OF 2024 (Arising from Crim.
Session Case No. (Arising from Criminal Case No. SOR-CR-AA-017-2022) 1.
OLOKOTUM MOSES 2. ODIA CHARLES STEPHEN 3. IBONGOT JULIUS 4. OPEDUN
JOSEPH 5. AKELLO RICHARD OKODOLI 6. ACOLO JULIUS :::::::::::::::::::::::::::::::
VERSUS UGANDA :::::::::::::::::::::::::::::::

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING ON BAIL

Introduction

- [1] The applicants [Olokotum Moses, Odia Charles Stephen, Ibongot Julius, Opedun Joseph, Okello Richard Okodoli and Acolo Julius] were charged with the offence of Murder contrary to sections 188 & 189 [now sections 171 & 172] of the Penal Code Act (PCA), Cap 128. It was alleged that the applicants and others still at large, on 10th April 2022 at Kanapa Village in Kumi District, with malice aforethought unlawfully killed Ariko Justine.
- [2] The applicants brought this application by Notice of Motion under Articles 23(6)(a) and 28(1) & (3)(a) of the Constitution of the Republic of Uganda and Sections 15(1) of the Trial on Indictments Act, Cap 25 (TIA) seeking for an order that the applicant be released on bail pending their trial by the Court.

- [3] The grounds of the application are summarized in the Notice of Motion and also set out in the affidavits in support of the application deposed by each of the applicants. Briefly, the grounds are that each applicant has a constitutional right to apply for bail and is presumed innocent until proven guilty. The \$1^{st}\$ to \$5^{th}\$ applicants respectively have been on remand since \$21^{st}\$

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April 2022, 21st May 2022, 8th June 2022 and 15th June 2022. They were committed to the High Court for trial on 18th August 2022 but the hearing of their case has not been fixed. Each of the applicants has presented two sureties who have undertaken to abide by the terms that may be set by the Court. The applicants have fixed places of abode as indicated in the respective affidavits in support. It is in the interest of justice that the application is granted.

- [4] The respondent did not file an affidavit in opposition to the application despite evidence of service of court process. When the case came up for hearing, Counsel for the respondent intimated that they intended to file a reply but they did not do so despite being given time by the Court. Counsel for the applicants was therefore allowed to proceed with the hearing of the application ex parte.

Representation and Hearing

- [5] The applicant was represented by Mr. Olobo James Felix of M/s Ewatu & Co. Advocates while the respondent (State) was represented by Mr. Okello Paul 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.
- [6] The issue for determination by the Court is whether the applicants have established sufficient grounds for his release on bail.

Resolution by the Court

- [7] 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.
- [8] 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.

[9] 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.

[10] 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;

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- 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.

[11] 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.

[12] On the case before me, although the applicant's bail application has not been opposed by the respondent, the applicants have to satisfy the Court on each of the conditions for grant of bail. Regarding the possibility of abscondment by the applicants 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, the Court was informed that the bail application for the 6th respondent was separately considered and was earlier released on bail. Since the respondent was not represented in court at the time, this information was not verified. It was shown by the applicants that the 1st, 2nd, and 3rd applicants had fixed places of abode at Kanapa Village, Kanapa Parish, Kanapa Sub-county, in Kumi District. The 4th applicant had a fixed place of abode in Kachopo Village, Kachopo Parish, Kanapa Sub-county in Kumi District while the 5th applicant had a fixed place of abode in Oduoro Village, Kanapa Parish, Kanapa Sub-county in Kumi District. Each of the applicants produced a copy of his national identity card and of a letter from the area L. C 1 Chairperson. I am satisfied that each of the applicants had a fixed place of abode in the area where they resided before their arrest as indicated in their respective affidavits in support of the application.

[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, each applicant produced two sureties who were identified and observed by the Court. The first applicant's sureties were Olokotum Gerald, his elder brother and Acolo Charles Michael, his cousin brother. However, the 1st surety did produce his original national ID and no explanation was offered to Court; and while in the application the 2nd surety was referred to as an elder brother to the 1st applicant, during his identification in court, he stated that he is a cousin brother to the applicant. Some questions, therefore, remained unanswered regarding the substance of the 1st applicant's sureties. I am not satisfied that the sureties will ensure his return to Court for trial. The other 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.
- [17] The 2nd applicant's sureties were Oumo Alon Joseph and Kukule Joseph who are brothers to the applicant. The 1st surety did not provide court with his original national ID during identification and no explanation was offered in that regard. I am not satisfied with the information concerning the said surety's fixed place of abode. I am also not satisfied that the applicant will not abscond when released on bail given the gravity of the offence and the severity of the likely punishment in the event of being convicted.
- [18] The 3rd applicant's sureties were Ojilong Richard and Okedi George William who are brothers to the applicant. The material on record proves that the sureties have fixed places of abode and are closely related to the applicant. Both sureties produced their original National Identification cards to the Court. I would find the sureties substantial.
- [19] The 4th applicant's sureties were Ikot Michael and Icilat Charles who are brothers to the applicant. The material on record proves that the sureties have fixed places of abode and are closely related to the applicant. Both sureties produced their original National Identification cards to the Court. I would also find these sureties substantial.
- [20] The 5th applicant's sureties were Aguria David and Odeke Charles Michael who are brothers to the 5th applicant. The material on record proves that the sureties have fixed places of abode and are closely related to the applicant. Both sureties produced their original National Identification cards to court for viewing and identification. I would also find the sureties substantial.
- [21] Nevertheless, despite the finding that 3rd, 4th and 5th applicants have produced sureties who might be substantial, I am not satisfied that the said applicants will not abscond when released on bail on account of the gravity of the offences and the likely consequences if the applicants were to be convicted upon trial.

[22] The other ground for consideration by the Court is whether the applicants are likely to interfere with key prosecution 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

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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 applicants respectively, I find nothing to satisfy me that the applicants will not interfere with witnesses in the matter. A potential threat to that effect therefore exists and, on this grounds well, the application would fail.

[23] Given the above findings, I find that the applicants have failed to satisfy the Court that they are entitled to be released on bail owing to the circumstances set out herein above. The interest of justice therefore dictates that the bail application by the applicants be denied. Accordingly, the application for bail is dismissed. The applicants shall await placing of their case on session for hearing.

It is so ordered.

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

am gm

Boniface Wamala . IIIDGE

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