

UGANDA / JUDGMENT

Omiat v Uganda (Miscellaneous Application 13 of 2022) [2023]

UGHCCRD 52 (17 August 2023)

[2023] UGHCCRD 52

COURT

HC: Criminal Division (Uganda)

BEFORE

Adonyo, J

CASE / FILE NUMBER

Miscellaneous Application 13 of 2022

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The Republic of Uganda

In The High Court of Uganda in Soroti Miscellaneous Application No. 0013 of 2022 (Arising from Criminal Case No. AA-005 of 2020)

10 Omiat Patrick ::::::::::: ### ## ## ## ## ## ##

Versus

<table>

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

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

Ruling

This is an application brought by way of notice of motion under Articles 23(6)(a) & 28 (3) of the Constitution of Uganda 1995 and Sections 14(1) and 15 of the Trial on Indictment Act Cap. 23 for orders that the applicant be released on bail pending committal of the accused and the hearing of criminal case no. AA-005 of 2020.

The grounds of the application as set out in the application and supporting affidavit briefly are that the applicant was arrested and remanded to Soroti Government prison without being committed and has been waiting for his trial but has since not been cause listed. The applicant shall not abscond trial if released on bail, the applicant is presumed innocent until proven guilty or until he pleads guilty to the charges of murder and arson. The offence he is charged

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with is bailable and the applicant has substantial sureties who understand their $\$S$ obligations.

The respondents were dully served with the application however no reply was made.

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

The law applicable to bail pending trial was 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; 15

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 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 20 depending on the circumstances of each case.

Section 14(1) of the Trial on Indictment Act amplifies Article 23(6)(a) of the 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 25 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, 5 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 principles as enshrined in the Constitution—

- (a) the right of an applicant to be presumed innocent as provided for in article 10 28(3)(a) 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 court to grant bail on such terms and conditions as the court

considers reasonable; and 15

- (e) the need to balance the rights of the applicant and the interests of justice.

Having explored the law on bail, I will now turn to the merits of this application. I will adopt the order used by the Applicant's counsel in their submissions.

a. Fixed place of abode.

- The applicant under paragraph 10 of his affidavit states that at the time of his 20 arrest he was a permanent resident of Odocai village, Alengo Parish, Atiira Sub County, Serere District within the jurisdiction of this Honourable court. 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 25 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 fixed place of abode

within the jurisdiction of the court. This is amplified by paragraph 13(k) of the S 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. Where the applicant fails to prove this under section 15(1) of the TIA the court may deny him bail.

However, no introduction letter from the LC1 of the area where the applicant is stated to have a fixed place of abode was attached to this application. The fact of the applicant having a fixed place of abode has not been proved. I find that this ground fails.

b. Substantial Sureties. 15

Under paragraph 9 of his affidavit the applicant presents 2 sureties to wit Okello Benard a cousin, resident of Akopor Village, Atiira Parish, Atiira sub-county, Serere District and his aunt Amuge Hellen Beatrice resident of Odocai village, Alengo Parish, Atiira Sub County, Serere District. For each an introduction letter from the LC1 of their area was attached as well as copies of their national identity cards. Counsel submitted that he explained to the sureties their roles and duties which they understood.

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

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 S the following factors—
 - (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 10
 - (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; 15
 - (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.

The sureties presented are all related to the applicant and resident of the same 20 sub-county and District and as such are in a position to compel the applicant to appear in court when needed. I find that they are substantial.

Ideally, an accused person should be granted bail if he or she fulfils the set 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 25 and I cannot exercise discretion to grant him bail. Without the confirmation that the applicant has a fixed place of abode within the jurisdiction of this court, this application would fail.

Accordingly, taking into account that the applicant is charged with very serious S offences of murder and arson which both carry very heavy penalties upon conviction, I am satisfied that there is present a high chance that the applicant may abscond from his trial upon being released on bail and he may not be traced.

This application is thus rejected on the basis that the court is not satisfied that 10\$ the applicant has proved that he has a fixed place of abode within the jurisdiction of this court.

Accordingly, the application is rejected. The applicant is advised that he may file another application in future.

I so order.

Henry Peter Adonyo

Judge

17th August 2023

**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT SOROTI.
CRIMINAL MISC. APPLICATION NO. 0013 OF 2022 (ARISING FROM CRIMINAL CASE
NO. AA-005 OF 2020) <table> OMIAT PATRICK APPLICANT**

\$=VS=\$

..... UGANDA.....

PRODUCTION WARRANT

TO: The Superintendent of Prisons Uganda Government Prison **SOROTI**

You are hereby directed to produce the accused persons, **OMIAT PATRICK** before this Honorable Court on this 17th day of AUGUST, 2023 at 2:00 O'clock in the afternoon.

Given under my hand and the seal of this Honorable Court this..... \$int\$ of... July 2023.

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DEPUTY REGISTRAR

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