

UGANDA / JUDGMENT

Onepur v Uganda (Criminal Miscellaneous Application 40 of 2023) [2024] UGHC 339 (23 April 2024)

[2024] UGHC 339

COURT

High Court of Uganda

BEFORE

Adonyo, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 40 of 2023

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The Republic of Uganda

In the High Court of Uganda at Soroti

Miscellaneous Application No. 0040 of 2023

(Arising from High Court Session Case No. 151 of 2020)

Onepur Peter :::::::::::::::::::: 10

Versus

<table>

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

Before: Hon. Justice Dr Henry Peter Adonyo**Ruling**

1. Introduction.

This is an application by way of Notice of motion brought under Articles 20 (2), 23 (6)(a) & 28 (1) & (3) (a) of the Constitution of Uganda, sections 14 and 15 of the Trial on Indictment Act and Rule 2 of the Judicature (Criminal Procedure) (Applications) Rules for orders that the Applicant be released on bail pending determination of his trial that is now ongoing before the High Court of Uganda at Soroti.

2. Grounds.

The grounds of the application as set out in the application and supporting affidavit sworn by the applicant are that the applicant stands charged with the offence of Murder c/s 188 & 189 and Robbery with Aggravation contrary to

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section 285 & 286 of the Penal Code Act before the Chief Magistrates Court of \$\\mathsf{S}\$ Soroti and he is presently remanded at Soroti Government Prison.

That the offences for which the applicant is charged with are bailable and the applicant has a constitutional right to apply for bail. That this Honourable Court has the jurisdiction to entertain the application for bail pending the trial of applicant. That the applicant has a fixed place of abode and a permanent place of residence at Nacebwe village, Ogerai parish, Kobulubulu sub-county Kaberamaido District- Uganda.

That the applicant is a married man with three wives, twelve (12) children plus five (5) dependents who are of school going age, who all need his care as he was

supporting them as the sole bread winner for the family before his arrest. The 15 Applicant has been on remand in prison since the 20th day of February 2020 to date.

That the applicant was committed to the High Court for Trial, which indeed commenced but for one reason or the other, have now been adjourned repeatedly to the next convenient session of the High Court before three (3) separate judges of the High Court but has never been concluded to date.

The respondent in an affidavit in reply sworn by State Attorney Okello Paul objected to this application on the grounds the applicant is charged with murder and aggravated robbery which offences 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.

That the prosecution is ready with its witnesses to proceed anytime if this case is scheduled for hearing.

That the applicant has a constitutional right to apply for bail but grant is the \$\\mathsf{S}\$ preserve of this court and he prays it be denied.

That the applicant is likely to interfere with prosecution witnesses if released on bail.

That the applicant has not attached any copies of sureties' national IDs as well as letters of introduction. 10

That the respondent verily believes that this court shall take considerable measures to ensure that the accused person is cause listed for trial as soon as possible.

- 3. Representation.

- The applicant was represented by M/s Twontoo & Co. Advocates and the 15 respondent by the Office of the DPP.

This application proceeded by way of written submissions which are considered in the determination of this application together with the law and the affidavit evidence.

20 4. Determination.

> The presumption of innocence is the primary principle for which a court may, in the 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: \$ \\mathsf{S}\$

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 under paragraph 6, the applicant conceded this Honourable 10 Court's discretion to release him on bail pending his committal and hearing of the case since it is his constitutional right to apply for bail, which is, in my view, aligned with Article 23(6)(a) of the Constitution.

Capital offences such as murder and aggravated robbery, as brought against the applicant in the instant application, are bailable. However, whether the court is

inclined to exercise its discretion to grant or not is a matter which depends on 15 the circumstances of each case.

Section 14(1) of the Trial on Indictments Act, Cap 23 augments the standpoint outlined in Article 23(6)(a) of the Constitution. It underpins this court's discretion to release an accused person, at any stage of the proceedings, on taking from

him or her a recognisance consisting of a bond, with or without sureties, for such 20 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 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 28(3)(a) of the Constitution;
- (b) the applicant's right to liberty as provided for in article 23 of the Constitution; 55
- (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
- (e) the need to balance the rights of the applicant and the interests of justice.

Paragraph 12 of the Constitution (Bail Guidelines for Courts of Judicature) 10 (Practice) Directions provides for contents of a bail application thus;

An application for bail shall contain the particulars of the applicant, accompanied by-

- (a) a copy of the applicant's national identity card, or passport or aliens identification card, or employment card, or student identity card;
- (b) an introduction letter from the Local Council 1 chairperson of the area where the applicant resides;
- (c) where applicable, asylum seeker or refugee registration documents issued by the Office of the Prime Minister; and
- (d) expounded grounds for the application. 20

Section 15(1) of the Trial on Indictment Act provides thus;

Notwithstanding section 14, the court may refuse to grant bail to a person accused of an offence specified in subsection (2) if he or she does not prove to the satisfaction of the court—

- (a) that exceptional circumstances exist justifying his or her release on bail; and 25 (b) that he or she will not abscond when released on bail.

In this section, "exceptional circumstances" means any of the following—

- (a) grave illness certified by a medical officer of the prison or other institution or \$ \mathsf{S} \$ place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody;
- (b) a certificate of no objection signed by the Director of Public Prosecutions; or
- (c) the infancy or advanced age of the accused.
- However, these special circumstances have been found non-mandatory. 10

Section 15(4) provides 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 the 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 conditions of his or her bail; and
- (d) whether there are other charges pending against the accused. 20

In deciding to grant or not to grant bail to the applicant, the court is charged to consider the accused's demonstration that he will not abscond trial by considering the above factors, which are looked at one by one.

- Fixed place of abode. i.
- The applicant under paragraph 4 of his affidavit stated that he has a fixed place 25 of abode at Nacebwe village, Ogerai parish, Kobulubulu sub-county Kaberamaido District- Uganda. However, he has not provided any evidence to prove this

$\S$ assertion yet the essence of proving of a fixed place of abode is the traceability of an accused in the event of 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 position is amplified by paragraph 13(k) of the 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 $\S 15(1)$ of the TIA, the court may deny him bail.

In this instance the applicant has failed to prove by evidence that he has a fixed place of abode which is within the jurisdiction of this Honourable Court. He has provided no a letter of introduction in that respect. Given such a scenario, it is difficult to ascertain his traceability in case he absconds. This ground thus is not proved.

ii. Sureties.

While the applicant presented two sureties I do not find it necessary to examine their substantiality given the fact that the applicant has failed to prove that he has a fixed place of abode which is within the jurisdiction of this honourable Court. Consequently, this ground is found not useful for the reason given above.

5. Conclusion.

The applicant by failing to prove that he has a fixed place of abode which is within the jurisdiction of this Honourable Court has failed his own application.

That being so this application is found to lack merit and is accordingly dismissed. $\$ \backslash \mathrm{mathsf{S}} \$$ However, I note that is a year 2020 file in which hearing had actually commenced and is only pending the hearing of the defense's case.

That fact being so, I do direct that registrar of this Honourable Court have it cause listed for further hearing as soon as is practicable.

I so order. 10

Hon. Justice Dr henry Peter Adonyo

Judge

23rd April 2024

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