

UGANDA / JUDGMENT

Opio Obukulem and Another v Uganda (Criminal Miscellaneous Application 80 of 2024) [2025] UGHC 124 (13 March 2025) [2025] UGHC 124

COURT
High Court of Uganda

BEFORE
Boniface Wamala, J

CASE / FILE NUMBER
Criminal Miscellaneous Application 80 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT SOROTI CRIMINAL
MISCELLANEOUS APPLICATION NO. 80 OF 2024 (Arising from Criminal Session
Case No. 0103 OF 2024) 1. OPIO JOSEPH OBUKULEM 2. OGUGU SIMON alias
TAJIRI ::::::::::::::::::::::::::::::::::

VERSUS

UGANDA !!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

BEFORE: HON. JUSTICE BONIFACE WAMALA RULING ON BAIL

Introduction

- [1] Opio Joseph Obukulem and Ogugu Simon alias Tajiri (the applicants) were charged with three counts, namely; Murder contrary to sections 188 & 189 [now sections 171 & 172] of the Penal Code Act (PCA), Cap 128; Aggravated Robbery contrary to sections 285 and 286 [now sections 266 and 267] of the PCA Cap 128; and Attempted Murder contrary to section 204 [now section 187] of the PCA Cap 128. It was alleged that the applicants and others still at large, on 6th June 2023 at Olekat Village, Akoromit Sub-County in Kapelebyong District, with malice aforethought unlawfully killed Olem John. In Count II, it was alleged that the applicants and others still at large on the same day and at the same place, robbed Olem John of Cash UGX 660,000/=, 03 cows, sheep and a goat, and at, immediately before or after the said robbery, used actual violence on the said Olem John. In Count III, it was alleged that the applicants on the same day and at the same place, attempted to cause the death of Angella Teresa.

- [2] The applicants brought this application by Notice of Motion under Articles 23(6)(a) and 28(1) & (3) of the Constitution of the Republic of Uganda and Sections 14 and 15 [now sections 15 & 16] of the Trial on Indictments Act,

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Cap 25 (TIA) seeking for an order that they be released on bail pending their trial by the High 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 the applicants were arrested on 22nd December 2023 and detained at Kapelebyong Police Station. They were produced before the court on 28th December 2023 and remanded to Amuria Prison where they stayed until 2nd June 2024 when they were transferred to Soroti Government Prison. The 1st applicant stated that he has several medical conditions whose treatment cannot be adequately provided while in custody. The applicants stated that they each have a fixed place of abode. The 1st applicant is aged 56 years, married with six children and other 8 dependants. The 2nd applicant is aged 51 years, married with 10 children and other 8 dependants. Each applicant stated that they have no past criminal record or any other pending charges before any other court. Each applicant produced two sureties who were said to be substantial. They prayed to the Court to grant their bail application.
- [4] The application was opposed through an affidavit in reply deposed by Mr. Okello Paul , a State Attorney C/O ODDP Soroti Office, who stated that the offences with which the applicants are charged attract maximum penalties of death and life imprisonment upon conviction; which fact is within the knowledge of the applicants and is most likely to influence their abscondment if released on bail. He stated that although the applicants have a constitutional right to apply for bail, the discretion to grant bail remains a preserve of the Court. He further stated that if released on bail, the applicants are likely to interfere with key prosecution witnesses who are well known to them and are not under any protection. He averred that the claim by the 1st applicant concerning his health condition is mere speculation since he has not attached

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any report showing that the condition cannot be treated by the prisons medical facilities. The deponent further averred that the sureties produced by the applicants are not substantial. He finally averred that the applicants have not demonstrated any special circumstances justifying their release on bail and it is in the interest of justice that the bail application is denied.

Representation and Hearing

- [5] The applicant was represented by **Mr. Leonard Otee** of \$M/s\$ Otee Associated Advocates while the respondent (State) was represented by Ms. Lunyolo Stella Maries from the Office of the Director of Public Prosecutions (ODPP). The hearing proceeded by way of written submissions which were filed by both counsel and have been adopted and relied on by the Court.
- [6] The issue for determination by the Court is whether the applicant has 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

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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;

- 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 and Aggravated Robbery being some of them, unless

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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, the applicant's bail application has been opposed by the respondent on the following grounds;

- (i) The applicant is likely to abscond given the gravity of the offence and the fact that the sureties presented by the applicant are not substantial;
- (ii) The applicant is likely to interfere with key prosecution witnesses who are known to him and are not under any protection; and

(iii) It is in the interest of justice that the bail application is denied.

[13] Regarding the possibility of absconding 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.*

[14] On the evidence before me, it was shown by each applicant that they have fixed places of abode. The 1st applicant resided at Akworo Cell, Nothern Ward, Akore Town Council, in Kapelebyong District. The 2nd applicant resided at Amukurat Village, Akoromit Parish, Akoromit Sub-county in Kapelebyong District. The applicants produced copies of their National Identity Cards and of a letter from their respective area L. C 1 Chairperson. I am satisfied that each applicant had a fixed place of abode in the area where he allegedly resided before his arrest.

[15] 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".

[16] 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.

[17] In the present case, each applicant produced two sureties who were identified and observed by the Court. The 1st applicant's sureties were Omus Raphael, male aged 45 years, a brother to the applicant; and Apolot Christine, female aged 43 years, a wife to the applicant. The sureties presented their National Identity Cards and introductory letters from their respective LC.1 Chairpersons. However, while the 2nd surety stated that she resided at Akworo Village in Akoromit Parish and Sub-County, she produced an L. C letter from the Chairperson of Aloet Cell, Central Ward, Akoret Town Council. This is a serious discrepancy that creates doubt concerning her fixed place of abode and on her substance as a surety. The sureties produced by the 1st applicant have been found by the Court not to be substantial.

- [18] The 2nd applicant's sureties were Ongaria David, male aged about 40 years, a brother to the applicant; and Asayo Jesca, female aged about 40 years, a wife to the applicant. It was established that the two sureties have fixed places of abode and their relationship with the 2nd applicant was established. The 2nd applicant's sureties have therefore been found substantial.
- [19] The other ground of objection by the respondent was that the applicants are likely to interfere with key prosecution witnesses who are well known to them and are currently under no protection. It was averred by the respondent that given that the witnesses are within the same locality as the applicants, the release of the applicants will not only intimidate but may also compromise the witnesses. For the court to arrive at a conclusion as to whether or not an applicant for bail is likely to interfere with witnesses, 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.
- [20] On the case before me, it is true as stated by Counsel for the respondent that the likely witnesses in this case are resident within the same locality as the applicants, they are well known to the applicants and they are not under any protection. It is shown in the facts that the 1st applicant was the area L. C1 Chairperson. That fact was not disputed and is further corroborated by the fact that the L. C letter on record was issued by the Vice Chairperson. It was further indicated that the 2nd applicant was the leader of the team of clan-mates of the deceased. This fact was also not disputed. That being the case, it is clear to me that both applicants are influential in their community and are likely to either intimidate, compromise or in any other way interfere with witnesses that are likely to be called by the prosecution. I therefore find this ground of objection by the respondent made out.
- [21] Given the above findings, neither applicant has satisfied the Court that he deserves to be released on bail. 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 his case on session for hearing.

It is so ordered.

Dated and signed this 13th day of March, 2025.

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Boniface Wamala

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Prepared on 12 October 2026 · Esheria