

UGANDA / JUDGMENT

Opio v Uganda (Miscellaneous Criminal Application 12 of 2024)

[2024] UGHC 1079 (25 November 2024)

[2024] UGHC 1079

COURT

High Court of Uganda

BEFORE

Boniface Wamala, J

CASE / FILE NUMBER

Miscellaneous Criminal Application 12 of 2024

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT SOROTI
MISCELLANEOUS CRIMINAL APPLICATION NO. 0012 OF 2024 (Arising from
Criminal Case No. SOR-CO-0011-2022) OPIO JOHN ::::::::::::::::::::::::::::::: VERSUS
UGANDA !!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING ON BAIL

Introduction

- [1] Opio John (the applicant) was 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 applicant with one other and others still at large, on 5th July 2022 at Adapur Village in Katakwi District, with malice aforethought unlawfully killed Engole James. The applicant brought this application by Notice of Motion under Articles 23(6)(a) of the Constitution of the Republic of Uganda and Sections 14(1) [now section 15(1)] of the Trial on Indictments Act, Cap 25 (TIA) seeking for an order that the applicant be released on bail pending his trial by the High Court.
- [2] The grounds of the application are summarized in the Notice of Motion and also set out in the affidavit in support of the application deposed by the applicant. Briefly, the grounds are that the applicant was arrested on 18th May 2022 and taken to Katakwi Central Police Station, was subsequently charged with the offence of Murder, remanded to Katakwi Government Prison and later transferred to Soroti Government Prison. The applicant was later committed to the High Court for trial. He is yet to stand trial and is unsure as to when

his case shall be heard. The applicant stated that he is presumed innocent until proven guilty or until he pleads guilty. He also stated that he has a constitutional right to apply for his release on bail. He further stated that the offence he is charged with is bailable and the Court has the discretion to

release him on bail pending his trial. He also stated that he is a first time offender and has never before been granted bail and failed to comply with the conditions. He has presented three substantial sureties who are ready and willing to stand for him. He has a permanent place of abode as indicated in the affidavit in support. He concluded that it is in the interest of justice that the application is granted.

- [3] The application was opposed through an affidavit in reply deposed by Ms. Lunyoro Stella Maries, a State Attorney C/O ODDP Soroti Office, who stated that the offence of Murder with which the applicant is charged attracts a maximum penalty of death upon conviction and the applicant is most likely to abscond bail in fear of the severe sentence upon conviction. She stated that the prosecution is ready with its witnesses to proceed anytime the case is scheduled for hearing. The deponent stated that although the applicant has a constitutional right to apply for bail, the power to grant bail remains a preserve of the Court. He further stated that if released on bail, the applicant is likely to interfere with key prosecution witnesses considering the fact that the offence was committed with a lot of violence and attracts a maximum penalty of death. She stated that the Court is taking considerable measures to ensure that the applicant who is already committed to the High Court is cause listed for trial. She further stated that the sureties presented by the applicant are not substantial since their social standing has not been identified. She prayed that if the court is inclined to grant the application, it should set stringent conditions to the applicant and his sureties so as to ensure that the applicant returns to attend his trial. She concluded that it is in the interest of justice that the bail application is denied.

Representation and Hearing

- [4] The applicant was represented by Ms. Winnie Agwero from M/s Legal Aid Project of the Uganda Law Society 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 which were duly filed by both counsel and have been adopted and relied on by the Court.
- [5] The issue for determination by the Court is whether the applicant has *established sufficient grounds for his release on bail.*

Resolution by the Court

- [6] 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.
- [7] 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.
- [8] 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.

- [9] 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.

- [10] 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.

[11] On the case before me, the applicant's bail application has been opposed by the respondent on the following grounds;

- (i) That 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 State is ready with its witnesses to proceed with the hearing of the criminal case;
- (iii) The applicant is likely to interfere with key prosecution witnesses given the fact that the offence was committed with a lot of violence and attracts a maximum penalty of death; and
- (iv) It is in the interest of justice that the bail application is denied.

[12] 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.**

[13] On the evidence before me, it was shown by the applicant that he has a fixed place of abode at Adapur Village, Apuuton Parish, Toroma Sub-county in Katakwi District. The applicant produced his National Identity Card and a copy of a letter from the area L. C 1 Chairperson. I am satisfied that the applicant had a fixed place of abode in the area where he allegedly resided before his arrest.

[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; $\frac{1}{2}$
- *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 chairperson of the area where the surety is ordinarily resident, among others.

[16] In the present case, the applicant produced three sureties who were identified and observed by the Court, namely, Ojakol Stanley, an uncle to the applicant; Isenyi Margret, a wife to the applicant; and Omuria Pampas, his elder brother. The sureties presented their National Identity Cards. However, the 1^{st} and 3^{rd} sureties presented L. C letters from areas they did not actually reside. This casts a doubt as to whether the said sureties have fixed places of abode; which is central to the determination as to whether they can be taken

as substantial sureties. It follows, therefore, that I am not satisfied that the sureties presented by the applicant are substantial. The applicant has thus not satisfied the Court that he will not abscond when released on bail particularly on account of fear of the consequences if he were to be convicted upon trial.

[17] The other ground of objection by the respondent was that the applicant is likely to interfere with key prosecution witnesses considering the fact that the offence was committed with a lot of violence and attracts a maximum penalty of death. 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 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 applicant, I find nothing to satisfy me that the applicant will not interfere with witnesses in the matter. A potential threat to that effect therefore exists and this ground of objection by the respondent is thus made out.

[18] Given the above findings, I find that the applicant has failed to satisfy the Court that he is 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 applicant be denied. Accordingly, the application for bail is dismissed. The applicant shall await placing of his case on session for hearing. It is so ordered.

Dated and signed this 25th day of November, 2024.

Simigmou

Boniface Wamala JUDGE

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughc/2024/1079/eng@2024-11-25>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/opio-v-uganda-miscellaneous-criminal-application-12-of-2024-2024-ughc-1079-25-november-2024-unknown-topic-unknown-court-2024>

Prepared on 14 October 2026 · Esheria