

UGANDA / JUDGMENT

Orago v Uganda (miscellaneous Application . 123 of 2024)

[2025] UGHC 170 (8 April 2025)

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COURT

High Court of Uganda

BEFORE

Boniface Wamala, J

CASE / FILE NUMBER

miscellaneous Application . 123 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT SOROTI MISCELLANEOUS
APPLICATION NO. 123 OF 2024 (ARISING FROM CRIMINAL SESSION CASE NO.
0166/2023; SER-CO-326/2022 AND CRB 262/2022)

ORAGO MOSES ::::::::::::::::::::::::::::::

VERSUS

UGANDA ::::::::::::::::::::::::::::::

BEFORE: HON. JUSTICE BONIFACE WAMALA RULING ON BAIL

Introduction

- [1] Orago Moses (the applicant) was charged with the offence of rape contrary to sections 123 and 124 (now sections 110 and 111) of the Penal Code Act (PCA), Cap 128. It was alleged that the applicant on 23rd April 2022 at Akwaro Village in Serere District did have carnal knowledge of Alayo Everlyne without her consent. The applicant brought this application by Notice of Motion under Articles 23(6)(a) and 28(3) of the Constitution of the Republic of Uganda and section 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 and any other orders as the court deems fit.

[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 23rd April 2022 and taken to Soroti Central Police Station, charged with the offence of Rape and remanded to Soroti Government Prison. The applicant was later committed to the High Court for trial on 20th September 2022 and further remanded to Soroti Government Prison. Since his committal, his case has not

been cause listed for trial; he is uncertain as to when his trial shall commence and has spent over one year on remand without appearing in Court. The applicant stated that he is presumed innocent until proved guilty. He also stated that he is a first time offender, the offence he is charged with is bailable by the Court and he has a constitutional right to apply for his release on bail. He has presented three sureties who understand their obligations and are ready to appear before court for examination. He further stated that by the time of his arrest, he had a fixed place of abode as indicated in the affidavit which he does not intend to change. He finally stated that he will not abscond from the jurisdiction of the court once released and is ready and willing to abide by the terms and conditions set by this Honorable Court.

[3] The application was opposed through an affidavit in reply deposed by Ms. Adero Doreen Olwo, a Senior State Attorney with the ODDP Soroti Office, who stated that while the applicant has a constitutional right to apply for bail and enjoys the presumption of innocence, the rights are not absolute. The court must weigh the rights against the potential risks to the community, victims and public safety and prioritize the broader interests of justice. The deponent stated that the offence of rape with which the applicant is charged attracts a maximum penalty of death upon conviction, which fact is within the knowledge of the applicant and is likely to influence him to abscond if released on bail. The deponent also stated that if released on bail, the applicant is likely to interfere with key prosecution witnesses who are known to him and are not under any protection. The deponent disputed the substantiality of the sureties and stated that the proposed sureties lack strong, legally compelling influence over the applicant's behavior and attendance and their details do not prove that they are substantial to justify their compliance with conditions that might be imposed or set by court for release on bail. She further stated that the applicant has not demonstrated that he has any exceptional circumstances justifying his release on bail. She averred that the transient and rural nature of

the applicant's claimed residence lacks verification for reliability. 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 Ms. Lunyolo Stella 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] 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), rape 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

4

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 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 applicant is likely to interfere with key prosecution witnesses who are known to him and are not under any protection;
- (iii) The applicant has not demonstrated any exceptional circumstances justifying his release on bail; and
- (iv) It is in the interest of justice that the bail application is denied.

[12] Regarding the possibility of abscondment by the applicant if released on bail, it is provided 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 in Akuoro Village, Olupe Parish, Kyere Su-County in Serere District. The applicant produced a letter from the area L. C 1 Chairperson which was viewed by the Court. For his lack of a National Identification card, it was explained that at the time of arrest, the applicant was a student and had not obtained one. These facts were not controverted by the respondent. I am convinced that the applicant has proved to the Court that he has a fixed place of abode to return to in case he is released on bail.

[14] Concerning the sureties, the applicant produced three sureties before the court. The three sureties were duly identified and observed by the Court namely; Orago Benjamin, a 61- year-old father to the applicant; Okiot Marako, a 50-year-old uncle to the applicant and Akello Anna Grace a 50-year-old Aunt to the applicant. The sureties presented their National Identity cards and introductory letters from their respective LC.1 Chairpersons. The objection by the respondent to the sureties was that they lacked strong, legally compelling influence over the applicant's behavior and attendance and their details could not prove that they are substantial to justify their compliance with conditions that may be set by the Court.

[15] In Paragraph 15 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, the determinants on the suitability of a surety are provided for 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] On the case before me, I find that the sureties were well identified, they produced the necessary documents, their relationship with the applicant was well established, they are responsible enough in as far as the applicant is concerned and are capable of ensuring or enforcing his return to court if released on bail. I find that the sureties presented by the applicant are substantial.

[18] The other ground of objection by the respondent was that the applicant is likely to interfere with key prosecution witnesses who are known to him and are not under any protection. 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, the age of the applicant and severity of the likely sentence in case of a conviction, I find a serious possibility that the applicant is likely to interfere with witnesses in the matter. A potential threat to that effect exists and this ground of objection is thus made out.

[19] Given the above findings, I find that the applicant has not satisfied the Court that it is in the interest of justice that the bail application is granted. The application is therefore dismissed and the applicant is advised to await his trial at the next convenient session.

It is so ordered.

Dated and signed this 8th day of April, 2025.

amp am

Boniface Wamala JUDGE

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