

UGANDA / JUDGMENT

Otai v Uganda (Criminal Miscellaneous Application 71 of 2023) [2024] UGHC 631 (8 July 2024)

[2024] UGHC 631

COURT

High Court of Uganda

BEFORE

Adonyo, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 71 of 2023

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The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Criminal Miscellaneous Application No. 71 of 2023

(Arising from Criminal Case No. AA 32 of 2023)

(Arising from Soroti CRB No. 356/2023)

Otal Godfrey :::::::::::::: 10

Versus

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

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

Ruling

1. Background: 15

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Otail Godfrey (the applicant) was charged with the offence of murder contrary to sections 171 and 172 of the Penal Code Act (PCA), Cap 128. The particulars are that Otai Godfrey alias Henry, on 12/09/2023 in the night hours at Ajobi in Soroti district, with malice aforethought, unlawfully killed Asio Prossy.

2. Legal basis of the Application: 20

The applicant brought this application by a Notice of Motion under Articles 23(6)(a) and 28(1) and (3)(a) of the Constitution of the Republic of Uganda, 1995, (the Constitution), and Sections 14 and 15 of the Trial on Indictments Act, Cap 25 (TIA), for orders that the applicant now on remand at be released on bail pending the hearing of his case and consequential directions be issued to regulate the bail.

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3. Grounds: $\overline{5}$

The applicant deposed grounds anchoring the application in his affidavit in support, which is on the court record, but I will briefly point out a few. The applicant stated that he has a constitutional right to apply for bail, is presumed innocent until proven guilty, has been in detention since 3rd October 2023, has a fixed place of abode, and has three sureties who understand their obligation to this court.

4. Grounds in objection - Affidavits in reply:

Lunyolo Stella Maries, a state attorney c/o ODPP – Soroti Office, deposed an affidavit in reply objecting to the instant application in which she briefly stated that the applicant is most likely to abscond bail in fear of the severe sentence upon conviction since murder, which he is charged with attracts a maximum penalty of death, since the prosecution is done with the inquiries in the matter, the applicant will be committed, the applicant is likely to interfere with the prosecution witnesses because he allegedly committed the offence with a lot of violence, no documentary proof such as land sale agreement, certificate of Title and/or tenancy agreement has

been availed to prove that they have fixed places of abode within the jurisdiction of 20 this Honorable Court, the occupations of the proposed sureties is not stated hence a high likelihood that, they will not be able to answer to the recognizance pledged by the court.

5. Submissions:

Through Counsel Engwau George, the applicant filed written submissions arguing 25 this application. The respondent also filed her submissions. The court has considered the filed submissions of the parties together with the application, affidavits,

attached documents, relevant legal authorities, and applicable laws while $\overline{5}$ determining it.

4. Decision:

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 10 named in the bond to start his trial. (see *Uganda Vs Lawrence Luzinda 1986 (HCB) 33*, per Okello J as he then was)

Firstly, the presumption of innocence is the primary principle empowering this court in the exercise of its discretion to either allow or reject this instant application.

Article 28(3)(a) of the Constitution of the Republic of Uganda, 1995 provides that 15 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.

(see also: Article 11 of the Universal Declaration of Human Rights and Article 14(2) of the International Covenant on Civil and Political Rights).

Secondly, where a person is arrested in respect of a Criminal Offence, he is entitled 20 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 (see: Article 23(6)(a) of the Constitution of the Republic of Uganda).

In his affidavit, the applicant conceded that it was at the Honourable Court's discretion to release him on bail pending trial. He also alluded to his right to apply 25 for bail. The cited constitutional edicts espouse the three point rationale for such an application; the presumption of innocence of the accused, the right of the accused

to apply for bail and the discretion of this court to either grant or reject the instant $\$ \mathit{S} \$$ application, the applicant has by his averments aligned to the same.

I am also alive to the applicant's averment of having been in custody since 3rd October 2023 which is evidently more than 180 days on remand and it is aligned with Article 23(6) (c) which entitles the accused person the right to be released on

bail if he or she has spent one hundred and eighty days (180) on remand in respect 10 of an offence only triable by High Court.

However, the court retains the discretion to ensure that the accused person fulfils the legal requirements and conditions set by the court.

Capital offences in this regard, murder is bailable; however, whether the court is

inclined to exercise the discretion to grant or not is a matter dependent on the 15 circumstances of each case and the evidence adduced guaranteeing the applicant's return to the court to attend the trial.

Section 14(1) of the Trial on Indictments Act, Cap 25 stipulates the stance 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 20 recognisance consisting of a 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, 2022, under paragraph 5, provides the general principles in consideration of a bail 25 application thus:

- 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 the 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.

Having exhausted the legal provisions regarding bail, I will now turn to the merits of this application.

Under Section 15(1) of the Trial on Indictments Act, the Court may refuse to grant bail to persons charged with offences such as murder unless such applicant proves, 15 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.

The applicant, in his affidavit in support of the application, did not plead and prove exceptional circumstances and according to the case of Foundation for Human Rights

- Initiatives v Attorney General (Constitutional Petition No. 20 of 2006) [2008], proof of 20 these exceptional circumstances is not mandatory as the courts have the discretion to grant bail even when none is proved, because in that case, reference was made to an excerpt in *Uganda vs Kizza Besigye Constitutional Reference No. 20 of 2005* where it was held that:
- "Both High Court and subordinate courts are still free to exercise their discretion judicially and to impose reasonable conditions on the applicant."

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In addition to the reasonable conditions imposed on the applicant by the court, $\$S$ Section 15(4) of the TIA 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 no 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. 15

In deciding whether or not to grant bail to the applicant, the court is further enjoined to consider the accused's demonstration that he will not abscond trial, using the above factors, which are considered individually.

a) Fixed place of abode:

In his affidavit supporting his application, the applicant stated that he has a fixed 20 place of abode in Orupe cell, Orupe ward, Ocaapa town council in Serere district which is within the court's jurisdiction. Conversely the respondent objected to the applicant's averment contending that whereas the introductory letter purports that the applicant is a resident of that area, no documentary proof such as land sale agreement, certificate of Title and/or tenancy agreement has been availed to prove 25 that they he has a fixed place of abode within the jurisdiction of this Honorable court.

- The respondent also alluded to the allegation that the applicant's residency can $\$ \backslash \mathrm{mathsf{S}} \$$ change at will reiterating her objection to the residency without documentary proof. Section 15(4) (a) of the Trial on Indictments Act fortifies proof of a fixed place of abode as one of the determinants as to whether the applicant is likely to abscond once granted bail but also the failure of proving the same, bail can be denied.
- The above provision is also amplified by paragraph 13(k) of the Constitution (Bail 10 Guidelines for Courts of Judicature) (Practice) Directions.

While the law does not define the phrase 'fixed place of abode,' my interpretation is that a fixed place of abode ordinarily must be within the jurisdiction of the court considering the bail application. This means that one is traceable and is not likely to abscond, as one would easily attend court whenever required.

Apart from the averment in his application that the applicant has a fixed place of abode, the particulars on his annexed copy of his National Identity Card "B1", which I have examined, are aligned with annexure "B2", the LC1 letter that renders the fact of the applicant as a true resident of Orupe cell, Orupe ward, Ocaapa town council in Serere district which is within the court's jurisdiction.

I am thus convinced that the applicant proved his fixed place of abode, which aids in his traceability if granted bail.

b) <u>Proposed</u> sureties:

The applicant proposed three sureties whose particulars he disclosed as;

- 1) Okello John Francis (father of the applicant) - 56 years old, a peasant, resident of Orupe cell, Orupe ward, Kateta sub-county,

Number Identification National of district Serere CM67108101G7JD

- 2) Ikeu Anna Grace (mother of the applicant) - 53 years old, a peasant, resident of Orupe cell, Orupe ward, Ocaapa town council, Serere district of National Identification Number CF7009710166NL
- 3) Opio Andrew (a friend of the applicant) aged 43 years, a peasant, resident of Oburin village, Oburin parish, Olio subcounty in Serere district of National Identification Number CM80097102FLTD.

The respondent contended that the above proposed sureties did not attach documentary proof of their residences which were mentioned in the introductory

letters and that they did not state and prove their occupations thus indicating a high 15 likelihood that they will not be able to answer to the recognizance pledged by the court.

A "surety" is defined under Paragraph 4 of the Constitution (Bail Guidelines for Courts of Judicature) Practice Directions to mean a person who undertakes to ensure

that the applicant will appear in court and abide by the bail conditions and who 20 furnishes security which may be forfeited to State if the applicant fails to appear in court.

Furthermore, Section 15 (4)(b) of the Trial on Indictment Act and paragraph 13(1) (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 25 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.

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- Paragraph 15 of the Constitution (Bail Guidelines for Courts of Judicature) Practice \$ \mathsf{S} \$ Directions provides for determinants on the suitability of a surety, thus
- (1) When considering the suitability of a surety, the court shall take into
- (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
- (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 applicant disclosed his relationship to the proposed sureties and provided 20 copies of their National Identification documents and their respective local council chairpersons' introductory letters (annexures "A1-A6"), which I have thoroughly examined. They convey information related to the proposed sureties' fixed places of abode, which are aligned with the annexures and the averments.
- Whereas the applicant did not disclose the occupations of the sureties, he disclosed 25 that they are peasants, which, according to the Online English Dictionary, means \$a\$ person who lives in the country and works on the land, esp. as a smallholder or a

labourer; (chiefly Sociology) a member of an agricultural class dependent on \$\mathsf{S}\$ subsistence farming.

In my view, this court will be speculating in forming the opinion that because the proposed sureties are peasants, they cannot afford the recognisance of this court.

I am satisfied that the disclosed relationships to the applicant of father, mother and friend manifest their superiority over the applicant and assure the court that they 10 will ensure that the applicant abides by the terms and conditions of the release on bail and attends his trial to the conclusion. I, therefore, find the proposed sureties sound and substantial enough to guarantee the applicant's return to attend his trial. Moreover, the applicant averred that they have undertaken to abide by all the terms and conditions that may be set by this Honourable Court. This ground thus is proved. 15

5. Conclusion

I am convinced that the grant of bail is merited in this case and that doing so will not subvert the cause of justice, given the substantiality of the sureties and the clear proof that the applicant has a permanent resident within the jurisdiction of the High Court.

Accordingly, bail is granted to the applicant pending the trial of the case against him upon the conditions set below, which consider the nature of the offences he is charged with.

The applicant is granted bail under the following conditions:

- a) The applicant is to deposit a Cash bond of Shs. 2,000,000/= 25
- b) The applicant and each of his sureties are to provide a recent photograph, telephone numbers and copies of national IDs to the Registrar of this court and the Chief Resident State Attorney, Soroti, for filing and record purposes.
- c) Each of the sureties presented is bound in the sum of Shs 10,000,000/=not cash.
- d) The Applicant is to report to the Registrar of this Court once a month on the last Monday of each month with effect from 5th August 2024 until otherwise directed by the court.

I so order.

Hon. Dr. Justice Henry Peter Adonyo Judge 8th July 2024.

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