

UGANDA / JUDGMENT

Oweka & 3 Others v Uganda (Criminal Miscellaneous Application 86 of 2023) [2024] UGHC 566 (21 March 2024) [2024] UGHC 566

COURT
High Court of Uganda

BEFORE
Mwaka, J

CASE / FILE NUMBER
Criminal Miscellaneous Application 86 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KITGUM

CRIMINAL MISC. APPLICATION No. 086/2023

CRIMINAL SESSION CASE No. AA - 010/2023.

5 (ARISING FROM CRIMINAL CASE – CRB No. 460/2022: PADER).

- 1. OWEKA WILLIAM (A1)
- 2. OKELLO LAWRENCE (A2)
- 3. TOO-KEMA PATRICK (A3)
- 4. OKIDI JAMES (A4) APPLICANTS/ACCUSED

10 Versus

UGANDA RESPONDENT/PROSECUTOR

BEFORE HON. MR. JUSTICE PHILIP W. MWAKA.

RULING.

Background.

- 15 [1]. The Applicants (Accused): **Oweka William (A1), Okello Lawrence (A2), Too-Kema Patrick (A3) and Okidi James (A4)**, were each charged with Four (4) Counts of **Aggravated Robbery Contrary to Sections 285 and 286(2) of the Penal Code Act, Cap. 120**.
- [2]. The Applicants are accused of robbing assorted property, livestock, foodstuffs 20 and cash worth in excess of Uganda Shillings Fifteen Million (UGX. 15,000,000/-) from - **Aciro Christine; Okot Charles; Can – Nena Robert; and, Otto Alfred** with the incidents all occurring at Wang Lobo Village in Pader District on the 19th December, 2022 and in so doing allegedly threatened to use deadly weapons on each of the Complainants to wit pangas (*machetes*) and clubs.
- [3]. This is an Application for release on Mandatory Bail instituted by Motion with supporting Affidavits of each Applicant and Annexures thereto filed under the following stipulated provisions - **Article 23(6) and 28(3) of the 1995 Constitution, as Amended; Sections 14 and 15 of the Trial on Indictments 5 Act, Cap. 23; and, Rules 10 and 11(2) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022**.
- [4]. The alternative prayer is that the Trial is fixed and heard expeditiously.
- [5]. The Court observes that the Offence is Capital in nature and subject to the Jurisdiction of the High Court much as the Accused A1, A2, A3 and A4 have 10 neither been committed to the High Court for Trial nor Indicted todate.

The Applicants' Case - Grounds of the Application and Submissions.

- [6]. The Applicants (Accused) each contend that they have been on remand at Kineni Government Prison in Pader District for more than **"One Hundred Sixty (160) days"** – as at the time of filing the Application on the 15th December, 2023 - and despite the period spent on remand have not been committed to the High Court for Trial or Indicted.
- [7]. Each of the Four (4) Applicants aver in their respective Affidavits that they have fixed places of abode in Pader District within the Jurisdiction of the Court. They 20 each claim to present substantial sureties to the Court and undertake to report to the Court whenever required and are willing to abide by any bail conditions which may be set for them by the Court. Exceptional circumstances are said to exist for some of the Applicants with particular reference to grave illness.

- [8]. It is their further contention that it is in the interests of Justice to release them 25 on bail with some alleging that they were detained at the time of their arrest at a Police Station for more than Forty-Eight (48) hours in breach of their Constitutional rights.
- [9]. In addition, they have never previously been charged in Court and do not have any other charges pending against them.
- [10]. The Applicants assert their Constitutional rights including the presumption of innocence until proved guilty as well as pointing out that the investigation into 5 the alleged aggravated robbery is not yet concluded.
- [11]. In regards to the period they have spent on remand as stated in their respective Affidavits, as at the date of the delivery of this decision today 21st March, 2024 they had been on remand as follows: - A1 has been on remand since the 20th January, 2023 being a period of One (1) Year Two (2) months; A2 has been on remand since the 13th 10 January, 2023 being a period of One (1) Year Two (2) Months Eight (8) Days; A3 has been on remand since the 20th January, 2023 a period of One (1) Year Two (2) months; and, A4 has been on remand since the 28th February, 2023 being a period of One (1) Year and Twenty (20) days.
- [12]. Concerning their respective residences permanent and fixed places of abode, 15 A1, A2 and A4 are residents of Te-Tworo Village, Aringa Parish, Te-Nam Sub-County in Pader District while A3 is a resident of Kal Angore North Village, Ongany Parish, Pader District.
- [13]. In respect of their identification credentials, the Applicants each presented to the Court Introduction Letters from the Chairpersons LC 1 of their respective villages dated 30 20 th November, 2023. A1 and A2 did not present National Identity Cards. A3 presented a National Identity Card indicating his date of birth as 14th March, 1996 and expiring on 29th March, 2025 – the name on the National Identity Card was Okema Patrick and not Too – Kema Patrick as indicated for the 3rd Applicant in this Application. A4 presented a National Identity Card indicating his date of birth as 15th August, 1990 and expiring on 29 25 th March, 2025.
- [14]. In summation, Counsel for the Applicants submitted that the Accused qualified for release on Mandatory bail and had met the requirements for grant thereof.

The Prosecution's Case - Response to the Application and Submissions.

- [15]. The Respondent (Prosecution) filed on the 14th February, 2024 a responsive Affidavit in Reply in opposition to the Bail Application deponed by No. 56168 D/C Mawadri Simon. The Prosecution averred that enquiries were complete and 5 there was sufficient evidence for committal of each of the Accused. The delay in committing the Accused was according to their explanation occasioned by the sequential movement and transfer of the Police File from Central Police Station, Pader to the Office of the Aswa Regional Police to the Office of the Resident State Attorney, Pader and the Office of the Assistant Director of Public 10 Prosecution, Gulu. The Prosecution informed the Court that it had failed to contact the

Complainants since their known contacts were unavailable.

- [16]. The Prosecution contended that there was a high likelihood of abscondment by the respective Accused as well as interference with witnesses, given the gravity of the offence, and submitted that the Accused had not provided and proved 15 exceptional circumstances for grant of bail including advanced age and grave illness. The Prosecution highlighted A3's failure to produce sureties.
- [17]. The Prosecution submitted that grant of bail was not absolute and the Court was required to exercise its discretion judiciously in providing reasonable terms of bail to ensure that the Accused attend their Trials.
- 20 [18]. In summation on the release of the Accused on Mandatory bail, the Prosecution prayed that the Court be pleased to dismiss the Accused's' Bail Application.
- [19]. The Court observed that certain paragraphs of the responsive Affidavit in Reply were not in tandem with the Application in respect of the charges and evidence, perhaps inadvertently – specifically the averment that the Accused were charged 25 with "**Murder**" contrary to **Section 188 and 189 of the Penal Code Act, Cap. 120** whereas the correct charge herein is **Aggravated Robbery contrary to Sections 285 and 286(2) of the Penal Code Act, Cap. 120**.

Applicants' Submissions in Rejoinder.

[20]. In rejoinder, the Counsel for the Applicants (Accused) submitted that the Application was for mandatory bail. The Applicants were therefore not required to meet the conditions of **Rule 14 of the Constitution (Bail Guidelines for**

5 Court of Judicature) (Practice) Directions, 2022.

- [21]. In the Applicants' view, the responsive Affidavit filed by the Prosecution did not raise serious issues and since the Prosecution did not object to the sureties presented by the respective Accused it was indicative that the Prosecution had conceded to them being substantial.
- 10 [22]. It was submitted that A2 is of advanced age considering that he is above Sixty (60) years old.
- [23]. The Applicant contended that since the Affidavit filed by the Prosecution wrongly referred to the offence of murder, it was incurably defective and prayed that the Court disregards the Affidavit and as such the Prosecution did not have 15 *Locus Standi* to make any reply to the bail Application.
- [24]. In conclusion, the Applicant re-iterated that the Accused have neither been committed nor indicted and prayed that the Court be pleased to grant the Accused Mandatory bail upon terms to be set by the Court.

20 Representation and Proceedings Before the Court.

- [25]. Counsel Simon Loka, represented the Applicants (Accused).
- [26]. Counsel, Mr. Muzige Hamza, Resident Senior State Attorney, represented the Prosecution.
- [27]. The entire proceedings which were conducted on the 15th February, 2024 were 25 interpreted in the Acholi language for the benefit of the Applicants (Accused) who were present throughout.

Considerations and Determination of the Court.

- [28]. The Court has had occasion to duly consider the Motion and grounds contained therein with its supporting Affidavits of each of the respective Applicants (Accused) and Annextures thereto; the Affidavit in Reply in opposition to the 5 Application; the Main Submissions, Reply and Rejoinder; and the proceedings.
- [29]. The Court finds that the Applicants have established that they have been on remand since January – February, 2023 and as at the date of the delivery of this decision today 21st March, 2024 they had been on remand as follows: - A1 has been on remand since the 20th January, 2023 being a period of One (1) Year Two (2) months; A2 has been on remand since the 13th 10 January, 2023 being a period of One (1) Year Two (2) Months Eight (8) Days; A3 has been on remand since the 20th January, 2023 a period of One (1) Year Two (2) months; and, A4 has been on remand since the 28th February, 2023 being a period of One (1) Year and Twenty (20) days.
- 15 [30]. The Court is conscious that **Article 23(6)(c) of the 1995 Constitution (As Amended by the Constitution (Amendment) Act, 2005** which substituted the earlier provision - provides that where a person is arrested in respect of an offence and in the case of an offence triable only by the High Court, if that person has been remanded in custody for One Hundred Eighty (180) days before 20 the case is committed to the High Court for Trial then that person shall be released on bail on such conditions as the Court considers reasonable.

See: Section 9 of the Constitution (Amendment) Act, 2005.

- [31]. This is restated in **Rule 10 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022** as well as other provisions in the 25 Guidelines which present the Court with considerations for reaching its determination on grant of bail to Applicants (Accused).
- [32]. It is the finding of the Court that the Accused herein are charged with Aggravated Robbery which is Capital in nature and is only triable by the High Court. The cited provisions in respect of Mandatory bail therefore apply in respect of the Applicants (Accused) in view of the period they have each spent on remand.

- 5 [33]. In view of the foregoing, it is the duty of the Court to consider reasonable terms and conditions upon which the Applicants (Accused) would be released on bail so as to ensure their attendance of Court upon commencement of the Trial. Moreso, in view of the representations of the Prosecution that they have obtained sufficient evidence to commit and indict the Applicants (Accused).
- 10 [34]. The Court having already duly considered their residences being their fixed places of abode in Paragraph 12 herein-above which are within its Jurisdiction as well as their respective varied identification credentials submitted in Paragraph 13 herein-above therefore now proceed to consider the sureties submitted by each of the respective Applicants (Accused).
- 15 **See: Rule 15 Constitution (Bail Guidelines for Court of Judicature) (Practice) Directions, 2022.**
- [35]. The first Accused, Oweka William, who did not submit to the Court a National Identity Card presented Two (2) sureties. The first surety, Kidega Justine, introduced as a Brother of the Accused is Twenty-Five (25) years old and a 20 Farmer submitted a National Identity Card and provided his telephone contact. The second surety, Atimango Vicky, introduced as a Sister of the Accused is Twenty-Seven (27) years old and a Farmer submitted a National Identity Card and provided her telephone contact. Both sureties provided to the Court Introduction Letters from their respective Chairpersons LC 1. The Court 25 considered the former an insufficient surety considering that owing to his youth he may not be able to compel A1's Court attendance while the latter is a sufficient surety whose maturity and stature would be able to compel A1's attendance.

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- [36]. The second accused, Okello Lawrence, who did not submit to the Court a National Identity Card presented Two (2) sureties. The first surety, Angee Marcella, introduced as a wife of the Accused is Forty-Three (43) years old and a Farmer submitted a National Identity Card, though she did not have a 5 telephone contact. The second surety, Ajok Betty, introduced as a sister of the Accused is Fifty-Two (52) years old and a Farmer submitted a National Identity Card, though she did not have a telephone contact. Both sureties submitted to the Court Introduction Letters from their respective Chairpersons LC 1. The Court considered both sufficient sureties with the former sharing a place of 10 abode with the Accused and the latter's maturity and stature able to compel A2's attendance of Court.
- [37]. The third Accused named in the Application as Too Kema Patrick, submitted to the Court a National Identity Card and clarified that his name is Okema Patrick which was in fact the name on his National Identity Card, failed to 15 present to the Court any sureties.

- [38]. The Court observes that at the proceedings on the 15th February, 2024 Counsel for the Applicant mentioned that A3 had Two (2) sureties in Court, though when called up they seemed to have mysteriously disappeared. There was therefore nobody the Court could bond to compel the attendance of the third Accused.
- 20 [39]. The fourth Accused, Okidi James, submitted to the Court a National Identity Card and presented Two (2) sureties. The first surety, Irepu Harriet, introduced as the wife of the Accused is Twenty-Seven (27) years old and a Farmer submitted a National Identity Card, though she did not have a telephone contact. The second surety, Olweny Job Lamwony introduced as the Uncle of the 25 Accused is Fifty-Five (55) years old and a Farmer submitted a National Identity Card, though he did not have a telephone contact. Both sureties submitted to the Court Introduction Letters from their respective Chairpersons LC 1.

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- [40]. The Court considered both sufficient sureties with the former sharing a place of abode with the Accused and the latter's maturity and stature able to compel A4's attendance of Court.
- [41]. The Court has duly considered **Section 14 and 15 of the Trial on Indictments**
- **5 Act, Cap. 23** which provides for release of Accused persons on a bond with or without sureties and is of the considered view that in order to compel the Accused to attend Trial in the circumstances of this case considering the gravity of the offence with which they are charged it is necessary that sureties are provided. The Court herein declines to grant bail on one's own recognisance.
- 10 [42]. Counsel for the Applicants prayed that the Court be pleased to find the sureties substantial. However, in the considerations herein-above the Court has determined the sureties who are deemed sufficient and those deemed to not be sufficient. At least Two (2) sufficient sureties are required.
- [43]. Accordingly, the Applicant(s) whom Court has deemed Two (2) of their sureties 15 sufficient shall be forthwith released on bail. The Court accepted both sureties provided by the second Applicant (Accused) – Okello Lawrence - as sufficient and these are his wife Angee Marcella and his sister Ajok Betty as well as both sureties provided by the fourth Applicant (Accused) – Okidi James - as sufficient and these are Irepu Harriet his wife and Olweny Job Lamwony his uncle.
- 20 [44]. Whereas the second Applicant (Accused) has not submitted a National Identity Card to the Court, an additional consideration of the Court in releasing him on bail - besides his having been on remand beyond the Constitutional term – is his age which at Sixty (60) qualifies as being of advanced age under the definition in **Rule 4 of the Constitution (Bail Guidelines for Court of Judicature) 25 (Practice) Directions, 2022**. The Court shall however bond him in cash to mitigate the possibility that he may fail to attend his Trial. **See: Misc.**

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- [45]. On the other hand, the first Applicant has not provided the required sufficient sureties while the third Applicant has provided none whatsoever. Therefore, they have not satisfied the conditions for grant of bail set by the Court and are however not precluded from submitting further Applications in satisfaction of 5 the terms of bail required by the Court.
- [46]. For the avoidance of doubt and to ensure utmost clarity, here the Court makes reference to and considers the respective sureties' "**stature**" relative to the Applicant (Accused) in determining whether the particular individual presented as a surety would likely command sufficient personal authority over the 10 Applicant (Accused) or for that matter respect as, **inter alia**; a spouse, elder sibling, parent, guardian and, or elder in the home or family (including extended family) to compel their attendance of the Trial when called upon, or not.
- [47]. In the final event, the Court finds merit in only the second and fourth Applicants (Accused) having satisfied the conditions for release on bail set by the Court and 15 shall each be bonded in cash in the sum of Uganda Shillings Three Million (UGX. 3,000,000/-) with each of their Two (2) identified and accepted sureties for the second Applicant being **Angee Marcella** and **Ajok Betty** and for the fourth Applicant being **Irepu Harriet** and **Olweny Job Lamwony** – executing a bond in the sum of Uganda Shillings Five Million (UGX. 5,000,000/-) not cash. The 20 second and fourth Applicants (Accused) shall each report to the Chief Magistrate's Court, Pader every first (1st) Monday of the Month beginning in April, 2024 – or the next working day should the first Monday of the Month transpire to be a weekend, or public holiday. These measures are intended to ensure that the second and fourth Accused attend their Trial(s).
- 25 [48]. The Application in respect of the first Applicant and third Applicant is hereby dismissed.
- [49]. It is so ordered.

Orders of the Court.

- [50]. The Court makes the following Orders: -
- 1. The Application in respect of only the second Applicant **Okello Lawrence** - and the fourth Applicant – **Okidi James** - has merit having 5 satisfied the conditions for release on bail and is hereby granted.
- 2. The second Applicant and the fourth Applicant shall prior to their release on bail each execute a cash bond of Uganda Shillings Three Million (UGX. 3,000,000/).

- 3. Each of the Applicants Two (2) sureties identified **Angee Marcella and 10 Ajok Betty for the second Applicant (Accused)** and **Irepu Harriet and Olweny Job Lamwony for the fourth Applicant (Accused)** shall execute a non-cash bond of Uganda Shillings Five Million (UGX. 5,000,000/-).
- 4. The second Applicant and the fourth Applicant shall each report to the Chief Magistrate's Court, Pader every first (1st 15) Monday of the Month beginning in April, 2024 – or the next working day should the first Monday of the Month transpire to be a weekend, or a public holiday.
- 5. The Application in respect of the first Applicant and the third Applicant fails for not satisfying the conditions for release on bail and is hereby 20 dismissed.

[51]. It is so Ordered.

Signed and Dated on the 21st day of March, 2024 at the High Court, Kitgum

Circuit.

25 Philip W. Mwaka

Acting Judge of the High Court.

Delivery and Attendance.

This signed and dated Ruling, has been delivered in open Court at the High Court, Kitgum Circuit on **Thursday, the 21st day of March, 2024 at 09:00am** and the parties present are recorded hereunder.

| 5 | 1.
Counsel for the Applicant | – | Mr. Simon Loka. |

|---|-----|---|-----|

| | 2.
Respondent Counsel | | |

| | (Prosecution/State) | - | Mr. Ojara Patrick, RSSA. |

| | st Applicant
3.
1 | - | Oweka William. |

| | nd Applicant
4.
2 | - | Okello Lawrence. |

| 10 | rd Applicant
5.
3 | - | Too –
Kema Patrick. |

| | 6.
4
th Applicant | - | Okidi James. |

| | 7.
Court Clerk/Interpreter | - | Mr. Atube Michael. |

Philip W. Mwaka

15 Acting Judge of the High Court.

21st day of March, 2024.

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