

UGANDA / JUDGMENT

Semugoma v Uganda (Criminal Miscellaneous Application 10 of 2023)

[2023] UGHCCRD 86 (25 May 2023)

[2023] UGHCCRD 86

COURT

HC: Criminal Division (Uganda)

BEFORE

Kaahwa, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 10 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT MUKONO CRIMINAL
MISCELLANEOUS APPLICATION NO. 10 OF 2023 (ARISING CRIMINAL CASE NO. NTE
045 OF 2022

SEMUGOMA PIUS MUKASA:.....

VERSUS

UGANDA:.....

BEFORE HON. LADY JUSTICE CHRISTINE KAAHWA

RULING

This is an Application brought by way of Notice of Motion under Section 98 of the Civil Procedure Act Cap 71, Order 52 rules 1 and 3 of the Civil Procedure Rules that Semugoma Pius Mukasa, the Applicant, be released on bail.

Upon perusal of the submissions of the Applicant, I observed that the correct provisions were cited and the error above may have occurred due failure to properly edit the Notice of Motion.

The grounds of the Bail Application are stated in the Notice of Motion filed on the 15th February 2023 and the supporting Affidavit of the Applicant are summarized as follows;

That the Applicant is being accused of Aggravated Defilement contrary to Section 129(3) and (4) (a) and (c) of the Penal Code Act, Cap 120; he was committed to the High Court for trial but his case has not been listed for any session and he is uncertain when the prosecution will commence; he has not

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pleaded guilty nor been proven guilty and he is innocent until proven guilty; he has been on remand in a Uganda Government Prison since March 2022.

In the supporting Affidavit deposed on the 10th February 2023, he averred that he has a fixed place of abode at Kisoga "B" Village, Ntenjeru Sub County, Mukono District; he shall not abscond bail if it is granted; he has no criminal record and has no other charges pending against him; he has 6 biological children to whom he is a bread winner and who are now "scattered in relatives" who are also financially constrained.

Lastly; he stated that he has substantial Sureties and it is in the interest of justice that he is released on bail. The three Sureties mentioned in paragraph 12 of his affidavit were presented to Court. The original National Identity Cards and introduction letters from the LC1 were presented to Court.

- 1. Basiibye Bosco is a resident of Kito-Kiganda Village, Kisoga Ward, Ntenjeru - Kisoga Town Council Mukono District. He holds National Identity Card Number CM62032103FR1A
- 2. Harriet Namuddu is a resident of Kisoga Central, Ntanzi Parish, Ntenjeru Sub county Mukono District. She holds National Identity Card Number CF76032107M9WH
- 3. Kameze Jackson is a resident of Kito-Kiganda Village, Kisoga Ward, Ntenjeru - Kisoga Town Council Mukono District. He holds National Identity Card Number CM6803210K03DH.

Counsel for the Applicant filed written submissions. He relied on the grounds in the Application and the Affidavit in Support of the Application.

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He submitted that Article 23 (6) (a) of the Constitution guarantees the right to apply to Court to be released on bail on such conditions as the Court considers reasonable. Counsel contended that the issue of bail is derived from the presumption of innocence which is enshrined in the Constitution under Article 28(3) (a) and that an Applicant must not be deprived of his or her freedom unnecessarily or merely punished where they have not been proved guilty. For that proposition he cited the case of Col. Dr. Kiiza Besigye Versus Uganda Criminal Application 20 of 2016.

He argued that the Applicant was charged with Aggravated Defilement which is bailable. He cited the case of Okello Augustin versus Uganda Criminal Misc. Application 20 of 2012 where Hon. Justice Lamukia Mukasa (as then was) stated that the Applicant was charged with treason which is serious offence that threatens National Security and affects the safety of the people and their

property, however he is presumed innocent. He stated that in that Bail Application Justice Lamek Mukasa relied on the case of Attorney General versus Tushabe (2008) 2 EA 26 where Mulenga JSC, as he then was, with the concurrence of the other members of Supreme Court stated that "it is clear to me that clause 6 of Article 23 applies to every person awaiting trial for a criminal offence without exception under paragraph (a) of the clause, every such person at any time, upon or after being charged may apply for release on bail, and the Court may at its discretion grant the Applicant Bail irrespective of the class of the criminal offence for which he is charged.

He submitted that Section 14 (1) of the Trial on Indictment Act cap 33:01 (TIA) gives the Court power to release an accused person on Bail putting into consideration a recognizance consisting of a bond with or without Sureties. He contended that since the Applicant was committed for trial which shows that investigations are complete and thus there was no likelihood of interference with the witnesses.

He concluded by submitting that exceptional circumstances are no longer a mandatory requirement as was stated in Foundation for Human Rights Initiative versus Attorney General, Constitutional Petition 20 of 2006.

The Respondent opposed the Application and relied on an Affidavit deposed by Byakutaaga Sheba on 9th May 2023, she states that she is employed by the Office of the Director of Public Prosecutions (ODPP) as a State Attorney; the Applicant is charged with a grave offence of Aggravated Defilement which carries a maximum sentence of death upon conviction and therefore there is a likelihood of absconding; the Applicant is committed to the High Court but his case has not been fixed for hearing; the Applicant states that he has a fixed place of abode but has not presented any proof in form of a land Sales Agreement or payment of a utility bill in his names and thus his release on Bail may render his trial nugatory in case he absconds.

Further, the Sureties presented do not show the relationship between them and Application and capacity to compel the Applicant to attend Court; the Applicant has not proved any exceptional circumstances to justify release on

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Bail as he is charged with a serious offence and he is likely to interfere with prosecution witnesses.

The Respondent was represented by Ms. Josephine Nanyonga who expounded on the grounds for opposing the Application as contained in the Affidavit in Reply and submissions. Similarly, I will not repeat all the arguments of Counsel.

She submitted that Aggravated Defilement carries a maximum penalty of death and that there was a high likelihood of absconding if the Applicant is granted Bail. That the Applicant was a guardian to the victim; as the mother of the victim was the Applicant's concubine and that upon release he is likely to return to the same area and yet the victim and complainant still reside in the same area.

She strongly submitted that this is a matter of public interest and if the trial fails because of non-attendance by the Applicant; the public will lose confidence in the justice system. Counsel submitted that the letter dated 17th April 2023 presented in lieu of a National Identity Card does not have any confirmation that the particulars of the Applicant are on the National Register and that no reason has been presented to Court why he did not have a National Identity Card. It was contended that the letter does not show where his place of registration is and therefore it is difficult to confirm his registration and residence at Kisoga.

In regard to the Basiibye Bosco, she pointed out to the Court the apparent difference on the features on his original National Identity Card being darker and the photograph not being centrally placed. She contended that it

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appears to have been pasted. She also pointed out the difference in the position of the thumb print at the back of the card and further contended a lot of space was left on one side of the box and the finger print did not appear as a whole but rather half a print. She contrasted those features against the original National Identity Cards submitted for the other two Sureties.

She submitted that while the Respondent was alive to the rights of the Applicant in regard to applying for bail and to release; that right must be exercised considering the interest between the victim and the prosecution at large. She prayed that the application be dismissed and the Criminal Case be fixed for the next convenient Court session.

In rejoinder Counsel for the Applicant contended that the submissions as regards the Applicant being a guardian, living in the same residence with victim and likelihood of absconding were merely speculative.

In regard to the differences in the National Identity Card, Counsel for the Applicant confirmed the differences in the features and contended that the other security features both visible and invisible like the security seal were the same for all the sureties.

Concerning the omission to mention relationship between the Sureties and the Applicant's Counsel suggested that the Court should ask the surety what the nature of their relationship is. He reiterated his earlier prayers.

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ANALYSIS AND DETERMINATION

This Court shall consider the following in deciding whether or not to grant of Bail as was expounded in; Abindi and Another versus Uganda, Miscellaneous Application 20 of 2016); the personal circumstances of the Accused/Applicant, the circumstances of the crime and other relevant information which includes; the seriousness of the offence; the need to protect the victim or victims of the offence; protection of the community from further offending; the

strength of the prosecution's case; the severity of the possible sentence; the probability of conviction; the prior criminal history of the accused; the potential to interfere with prosecution witnesses; the possible delay in conducting the trial; the requirements for preparing a defence; and the view of the Police Criminal Investigations Department and Prosecution.

In *Masaba Geoffrey versus Uganda*, Criminal Misc. Application No. 0038 of 2016 it was held that "the requirement for and duties of Sureties cannot be underestimated, for they are seen by Court as the members of the public who will police the Applicant in his area of residence and ensure his attendance at the trial. They therefore must be persons of integrity, mature and have close geographical and where possible blood proximity to the Applicant."

The Applicant presented three Sureties who appeared in Court and be prayed that the Court finds them substantial.

Upon examination of Applicant's and the Sureties documents in Support of their antecedents the Court makes the following observations;

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The Applicant produced an introductory letter from his area of i. residence dated 29th December 2022 signed by the General Secretary who stated that the Applicant is a true and permanent resident of Kisoga Ward.

The Applicant also tendered a letter from the National Identification and Regulation Authority (NIRA), dated 17th April 2023 to show that he is registered on the National Register. This Court observes that the letter was addressed to the Judge High Court Mukono and states that "following your application for confirmation of the National Identification Register (NIR), this is to confirm that Semugoma Pius date of birth 08/01/1978 bearer of National Identification Number (NIN) CM7803210NTH3L appears on the NIR"

This letter however does not state when the High Court Judge requested those details. It does not quote the reference number of the letter from the said Judge. In any case Judges do not write letters to organizations as all official communication is done by the Registrars of the Courts or other persons so authorized. However, when the matter came for Ruling, Applicant's Counsel provided a National Identification Card by letter which was purportedly received by Mukono Court on 19/5/2023 and brought to Court's attention after midday when the Ruling was supposed to be read. The letter shows that the Applicant is a bearer of National Identification No. CM7803210NFI3L; and is a resident of Maternity, Nsuube/Kauga Ward, Mukono Central on the other hand the Letter of LC shows that the Applicant is a permanent Resident of Kisoga 1. The discrepancy in names is not

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explained. The National Identification bears 2 names; Semugoma Pius while the LC Letter bears 3 names; Semugoma Pius Mukasa.

I observe that the person this letter (from National Identification Registration Authority (NIRA) dated 17/4/2023) refers to Semugoma Pius and not Semugoma Pius Mukasa who is the Applicant in this case.

Basiibye Bosco is a resident of Kito-Kiganda Village, Kisoga Ward, ii. Ntenjeru - Kisoga Town Council Mukono District. He holds National Identity Card Number CM62032103FR1A. He presented his original National Identification and a letter from the LC 1. Kisoga LC I B, the LCI General Secretary stated that the surety had a permanent resident of the area and is also a person of good conduct.

The learned State Attorney drew the Courts attention to the apparent differences in the Basiibye's National Identity Card in comparison to the other cards of the sureties. Counsel for the Applicant also conceded that there were differences in the Cards. This Court took note of the differences and agrees with the observations of the State Attorney that passport photograph in the card does not appear to be centrally located and appears pasted on. The background of the passport photograph in the other National Identity Cards is white and yet for Basiibye it is visibly dark. The Court is not satisfied with the antecedents of this surety.

The Affidavit in Support of the Application does not state what the relationship between the Applicant and all the three Sureties is. Counsel for

the Applicant suggested that the Court should probe more on the relationship. It is my opinion that Counsel instructed to file Applications such as this should state the relationship between the Surety and Applicants in the Affidavit as well as their occupation among others. It is the duty of the Applicant to satisfy the Court that his Application is deserving. The Court is therefore not satisfied with the antecedents of the said Surety.

In regard to Harriet Namuddu and Kameze Jackson the affidavit and iii. the letter from the LCI do not state what the relationship is between the Applicant and Surety.

I have also read the summary of the case and ascertained, the Applicant is said to be a guardian of the victim and further there was threat to violence that is stabbing with knife if incident was reported.

I am therefore not persuaded that I should exercise my discretion to grant bail. Since the committal has been done, I recommend that the criminal case be heard in the next convenient session.

\$25\frac{1}{25}\$ day of May 2023. Dated at Mukono this ...

CHRISTINE KAAHWA JUDGE

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Prepared on 14 October 2026 · Esheria