

UGANDA / JUDGMENT

Sengoba v Uganda (Criminal Miscellaneous Application 92 of 2023) [2024] UGHC 919 (25 September 2024) [2024] UGHC 919

COURT
High Court of Uganda

BEFORE
Nakachwa, J

CASE / FILE NUMBER
Criminal Miscellaneous Application 92 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO CRIMINAL MISC. APPLICATIONS NO.
92 & 87 OF 2023 (ARISING OUT OF CRIMINAL CASE NO. AA 194 & 196 OF 2023)

SENGOBA SAMUEL MUGABI VERSUS

UGANDA RESPONDENT RESPONDENT

BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA

RULING

- 1. These are consolidated applications for grant of bail pending trial, brought by Notice of Notice of Motion under the provisions of Article 23 (6) (a) of the Constitution of the Republic of Uganda, 1995 as amended; sections 14 and 15 of the Trial on Indictments Act, Cap. 23, Guideline No. 11 of the Constitutional (Bail Guidelines for Courts of Judicature (Practice) Directions 2022 and Rule 2 of the Judicature (Criminal Procedure) (Applications) Rules, S. I 13-8.
- 2. The grounds of the application are briefly contained in the Notice of Motion and supported in detail by the Applicant's affidavit dated 22th September, 2023 and the supplementary affidavit dated 8th July, 2024. The grounds were that:

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- (a) the Applicant is a resident of Lukalu - Kimbuguma, Katoogo Parish, Nama Sub County, Mukono District and a teacher by occupation:

- (b) the Applicant is of sound mind presently on remand in Luzira Upper Prison, Kampala District;
- (c) the Applicant was arrested on the 1st day of July, 2023, on allegations of defilement of a girl aged fifteen (15) years and aggravated defilement of a girl aged eleven (11) which he completely denies;
- (d) the Applicant was informed that he is charged with defilement of one of the pupils at his school and aggravated defilement with another pupil at his school which matter are pending determination by this honourable court;
- (e) prior to his arrest and detention, the Applicant has never been charged nor convicted with any criminal offence and he undertakes to abide by the bail terms set by this honourable court;
- (f) the Applicant is a law abiding citizen, head master of Samuel Kids Academy in Kakinzi Mukono District with a permanent place of abode around Mukono;
- (g) the Applicant has seven (7) people who are willing to stand as sureties for him and ensure that he attends court when required;
- (h) it is just and equitable that the Applicant is released on bail pending the hearing of criminal case No. 194 and 196 of 2023.
- 3. The Respondent filed an affidavit in reply deposed on 8th May and 22nd November, 2023, by Counsel Josephine Nanyonga, a State Attorney at the Office of the Director of Public Prosecutions. The Respondent's contention is that:
 - (a) the Applicant is charged with defilement and aggravated defilement which are grave offences;
 - (b) the Applicant has not furnished proof that he has a permanent place of abode; and
 - (c) none of the sureties mentioned have proved to have permanent place of abode by either producing land sales agreements or utility bills in their names thus there are high chances that they will fail to fulfill their obligations as sureties especially payment of bail money as no source of income is indicated.
- 4. On the 20th August, 2024, when these applications came up for hearing, the Applicant was represented by Counsel Claire Nakku from M/s Ssekandi & Co. Advocates. The Respondent was represented by Counsel Nanyonga Josephine, a Senior State Attorney from the Office of Director of Public Prosecutions. Both parties filed their written

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submissions and the affidavit in rejoinder was filed by the Applicant's Counsel.

- 5. At the hearing of the applications, the Applicant's counsel submitted that the Registrar registered two names yet the Applicant has three names Sengoba Samuel Mugabi. Counsel added that the Applicant has two files namely:
- (a) Miscellaneous Application 92/2023 arising from Criminal Case No. 194 of 2023; and
- (b) Miscellaneous Application 87 of 2023 arising from Criminal Case 196 of 2023 and that both files were committed.

The Applicant's counsel requested the honourable court to hear both applications concurrently. Counsel's request was not objected to by the Respondent's counsel. Hence the court consolidated the applications.

- 6. The Applicant's counsel submitted that the Applicant has a fixed place of abode within the jurisdiction of this court and that the Applicant has a permanent place of residence at Lukalu - Kimbuguma, Katoogo Parish, Nama Sub County, Mukono District. Thus the Applicant has satisfied the onus placed on him to prove that he has a permanent place of abode and prayed that this Honourable court find the same applicable pending hearing and determination of Criminal case No.194 & 196 of 2023. She added that there is no likelihood of the Applicant interfering with the investigations or prosecution witnesses.

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- 7. The Applicant averred that on the 1st day of July, 2023, he was arrested on allegations of defilement of a girl aged fifteen (15) years and aggravated defilement of a girl aged eleven (11) years during the month of July, 2023 which he completely denies. That on 4th day of September, 2023, he was produced before Mukono Chief Magistrate's Court at Nakifuma, committed to High Court for trial and remanded to Luzira Upper Prison.
- 8. During the hearing of this application, the Applicant's counsel presented four (4) sureties who were:
- (a) Mr. Ssentamu Godfrey aged 53 years, the Applicant's elder brother, a builder, resident of Kisasi Dungu Village, Kikaya Ward, Kawempe Division, Kampala District, with mobile telephone No. 0752825709;
- (b) Mrs. Nanyania Scovia aged 52 years, the Applicant's biological mother, a business-lady resident of Bukasa, Sentema Zone A, Bukasa Parish, Wakiso Sub County, Wakiso District, with mobile telephone No. 0755051638;
- (c) Mr. Mushiri Serwadda Kyagaba aged 27 years, the Applicant's brother, an electrical engineer and a resident of Bukasa, Sentema Zone A, Bukasa Parish, Wakiso Sub County, Wakiso District, with mobile telephone No. 0755644465 / 0776688339.

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- (d) Ms. Natabi Martha aged 24 years, the Applicant's sister-in-law, a cosmetologist and a resident of Bukasa. Sentema Zone A, Bukasa Parish, Wakiso Sub County, Wakiso District, with mobile telephone No. 0708756611 / 0764311250 and
- 9. The Applicant's counsel submitted that all these sureties are aware of their duties as sureties whose main obligation is to ensure that he attends court whenever he is required to do so.
 - \$10\$ The Applicant's counsel added that at the time of his arrest, he had a fixed place of abode at Lukalu - Kimbuguma, Katoogo Parish, Nama Sub County, Mukono District, where he has a home and a piggery farm. Thus the Applicant ought to be granted bail pending hearing and determination of criminal case No. 194 & 196 of 2023. Counsel referred to the case of *Panjur vs. Rep. (1973) EA 282* cited with approval in the case of **Kanyamunyu Mathew Muyogoma vs. Uganda Cr. App. No.15 0177/2017**.
 - \$11.\$ The Applicant's counsel submitted that by the time she filled these submissions, the Applicant had been on remand for over 304 days that is over 10 months which makes it fair enough to be released on bail as provided under Article 23 (6) (a) and (c) of the Constitution of the Republic of Uganda 1995, as amended. Counsel referred to the case of *Sserukwaya Steven and 3 others versus Uganda Criminal Misc. Application No. 19 of 2022*.
 - \$12\$ The Applicant's counsel submitted that it is Applicant's constitutional right to apply for bail though it is at the discretion of this honourable court to grant or refuse to grant the Applicant bail. Furthermore, Counsel prayed that this honourable court exercises its discretion in his favour and grants the Applicant bail on favourable condition as it deems fit.
 - \$13.\$ The Respondent's counsel averred that the Applicant is charged with grave offences of aggravated defilement & defilement c/s 129 of the Penal Code Act and has been committed to this court for trial. That the Respondent opposed these applications through the affidavits in reply. Furthermore, the Respondent's counsel contended that the Applicant has two different victims; one of them is a student at a school where he is a director. Counsel contended that if he is released on bail. his victim will not continue with her studies and may be influenced to not come for the trial; Secondly, the Respondent's counsel argued that since the Applicant is the director and head teacher of Samuel Kids Academy in Kakinzi Mukono District, if he is granted bail, the children attending his school will be at a risk of a similar abuse from the said Applicant. Counsel cited the case of **Adrian Yudus v. Uganda Misc. Cr. App No. 0030 of 2016**.
 - \$14.\$ The Respondent's counsel submitted that the Applicant failed to prove to this honourable court that he bears a name Sengoba Samuel Mugagga as per the LC1 introductory letter addressed to this honourable court on the 27th November, 2023.

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- 15. The Respondent's counsel argued that the Applicant's sureties have not furnished this honourable court with proof of any relationship between them and the accused, that there is no evidence that they have fixed places of abode in those areas hence not in position to compel the applicant to attend court if released on bail. The Respondent's counsel prayed that this court finds the sureties not substantial and deny bail to the Applicant.
- 16. In rejoinder, the Applicant's counsel submitted that according to Article 23 (6) (a) & (c) of the Constitution of the Republic of Uganda, where a person is arrested for any criminal case, the person is entitled to apply for bail and the person may be granted bail. That since the Applicant was arrested, the family of the Applicant worked with District Education Officials in Mukono to change the management and it has been running under a different name of Quality Care Junior School.
- The Applicant's counsel rejoined that the family also resolved \$17.\$ regardless of the fact that the applicant has a fixed place of abode, that the Applicant stays with his elder brother Sentamu Godfrey who will take it upon himself to ensure that the Applicant stays away from the school. The Applicant's counsel prayed that the sureties be considered substantive, as they will control and monitor the Applicant.

Issue

Whether the Applicant is entitled to be granted bail.

Court's consideration

Article 23 (6) of the Constitution of the Republic of Uganda, 1995 18. as amended provides that:

"Where a person is arrested in respect of a criminal offence-

- a) the person 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:
- b) in the case of an offence which is triable by the High Court as well as by a subordinate court, if that person has been remanded in custody in respect of the offence for sixty days before trial, that person shall be released on bail on such conditions as the court considers reasonable:
- c) in the case of an offence triable only by the High Court, if that person has been remanded in custody for one hundred and eighty days before the case is committed to the High Court, that person shall be released on bail on such conditions as the court considers reasonable."
- The above article is backed up by Article 28 (3) (a) of the 19. Constitution which provides for presumption of innocence of an accused person and this is the fundamental principle behind consideration for grant of bail. Section 14 of the Trial on Indictments Act provides that the High Court may at any stage of the proceedings release the accused person on bail on taking from him or her a recognizance consisting of a bond, with or without sureties.

20. In *Dr. Aggrey Kiyingi v. Uganda*, High Court Miscellaneous **Criminal Application No. 41 of 2005**, Justice C. A Okello held at page 4 of the ruling that:

> "As can be seen from the wording of the article, the right that an accused has under it, is the right to apply to court for bail but the discretion to grant or to reject the application is that of the court"

\$21.\$ The court has to consider a number of factors in deciding whether or not to grant bail. Paragraph 13 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, Legal Notice No. 8 of 2022 states as follows:

> "The court shall consider the following in handling a bail" application—

- (a) the gravity of the offence;
- (b) the nature of the offence;
- (c) the antecedents of the applicant so far as they are known;
- (d) the possibility of a substantial delay of the trial;
- (e) the applicant's age, physical and mental condition;
- (f) the likelihood of the applicant to attend court;
- (g) the stage of the proceedings;
- (h) the likelihood of the applicant to commit an offence while on bail;
- (i) the likelihood of the applicant interfering with witnesses;
- (j) the safety of the applicant, the community and complainants;
- (k) whether the applicant has a fixed place of abode within

Uganda or whether he or she is ordinarily resident outside Uganda:

(*I*) whether the applicant has sufficient sureties within Uganda to undertake that the applicant shall comply with the conditions of his or her bail:

- (m) whether the applicant has, on a previous occasion when released on bail, failed to comply with his or her bail terms;
- (n) whether there are any other charges pending against the applicant; or
- (o) whether the offence for which the applicant is charged involved violence."

22. The Applicant presented an introductory letter to prove that he has a fixed place of abode within this court's jurisdiction. He has also presented to this court his national identity card; a copy of which has been attached to the applications. Further, Counsel for the Applicant submitted before this honourable court that the Registrar registered two names yet the Applicant has three names Ssengooba Samuel Mugabi. This court has noted that the

Applicant's national identity card has three names – Ssenkooba Samuel Mugabi. Therefore, the error or omission in the indictment cannot be visited on the Applicant. This court is satisfied that the Applicant is a resident within this court's jurisdiction

appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of the law, and he will then be imprisoned, unless he obtains fresh bail. A surety who believes that the principal is likely to break the condition as to his appearance may have him arrested by a constable."

- As to the gravity of the offence and severity of the charge against 26. the Applicant, an accused person is not barred by any law from applying to be released on bail. The provisions of the Constitution of the Republic of Uganda, 1995 as amended, the Trial on Indictments Act, Cap 23 and the Bail Guidelines of 2022 cited above clearly give this court the discretion to grant or deny bail in capital offences.
- \$27.\$ Pursuant to the foregoing analysis, this court hereby grants bail in both applications No. 92 of 2023 and No. 87 of 2023 on the following terms:
- (a) the Applicant shall pay cash bond of UGX. \$5,000,000/\$ =;
- (b) each surety is bonded in the sum of UGX. 10,000,000/= **not cash**;
- (c) the Applicant shall report to the Deputy Registrar of the High Court of Uganda at Mukono once every month with effect from 25th October, 2024, till the final disposal of the main criminal cases:
- (d) each party shall bear their own costs of this application. I so rule and order accordingly.

This ruling is delivered this

In the presence of:

- (1) Counsel Nsubuga Simon holding brief for Claire Nakku from M/s Ssekandi & Co. Advocates, for the Applicant;
- (2) Counsel Kubokwe Kennedy, State Attorney from the Office of Director of Public Prosecutions, for the Respondent;
- (3) Mr. Ssenkooba Samuel, the Applicant;
- (4) Ms. Pauline Nakavuma, the Court Clerk.

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