

UGANDA / JUDGMENT

Sserubula v Uganda (Criminal Miscellaneous Application 320 of 2023) [2024] UGHCCRD 21 (13 March 2024) [2024] UGHCCRD 21

COURT

HC: Criminal Division (Uganda)

BEFORE

Elubu, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 320 of 2023

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SSERUBULA BRIAN alias SSERUBWAMA**APPLICANT****VERSUS****UGANDA****RESPONDENT****BEFORE: HON. MR. JUSTICE MICHAEL ELUBU RULING**

This Application is commenced under Articles 23(6)\$, 28(3)(a)\$ and 139(1)\$ of the Constitution of the Republic of Uganda, 1995; Section 40(2) of the Criminal Procedure Code Act, Cap. 116; Sections 14 of the Trial on Indictment Act Cap. 23; Rule 2 of the Judicature (Criminal Procedure) Application Rules SI 13-8 and The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions 2022.

The Applicant, Sserubula Brian alias Sserubwama, seeks an order that Mandatory Bail be granted pending his trial in the High Court.

The Application is premised on the grounds set out in the Notice of Motion and further particularized in the supporting affidavit deposed by the Applicant.

The Applicant deposed that he is 31 years of age and a resident of Kisigula village Cell Mutundwe Ward, Gombolola Ssabagabo Makindye-Wakiso District. That on the 22nd day of January 2023, he was detained at Natete Police Station for over two weeks. Later, on the 9th day of February 2023, the Applicant was produced before the Natete-Rubaga

Court, and charged with Murder Contrary to Sections 188 and 189 of the Penal Code Act. The Applicant was then remanded in Luzira Prison where he has been to date. That he is aware he has a fundamental and constitutional right to apply for bail. That he is presumed innocent until proven guilty or until he pleads guilty. In this case, the Applicant does not intend to plead guilty. That he is a young man who is innocently in custody and being unfairly detained without trial. The Applicant avers that he intends to appear in Court at all times to attend his trial in order to clear his name of any charges levelled against him. That the Applicant does not have any other pending criminal charges against him. That the Applicant has sound and substantial sureties living within the jurisdiction of the Court who have undertaken to ensure that he complies with the conditions of the bail. That there is no likelihood of the Applicant interfering with investigations or witnesses. He states that this Court has wide discretionary powers to release him on bail, as the offence is bailable by this Court. That he shall abide by all the bail conditions imposed upon him by the Court and that shall not abscond once released on bail. Lastly, that it is only fair, just, constitutional and in the best interest of justice that the Applicant be granted bail pending his trial.

The State opposes this Application. In an affidavit in reply deposed by Adong Harriet, a Senior State Attorney in the Office of the Director of Public Prosecutions, it is stated that the Applicant is charged with a serious offence of Murder Contrary to ss 188 and 189 of the Penal Code Act and the offence carries a maximum sentence of death. That the Applicant has been committed for trial. The respondent avers that the Applicant failed to prove that he has a fixed place of abode within Kisigula village cell, Mutundwe Ward, Gombolola Ssabagabo Makindye Wakiso District. The evidence of address of residence provided is merely temporary. That once released on bail, the Applicant will abscond. Further, that the sureties presented

by the Applicant are not substantial. They failed to prove that they have a fixed place of abode. That the Applicant will interfere with prosecution witnesses since they are known to him. Lastly, that it is fair and in the interest of justice that the Application be denied.

Submissions

The Respondent filed written submissions. These have been carefully studied and utilized in the determination of this Application.

Determination.

Article 23(6)(c) of the Constitution of the Republic of Uganda, 1995 and Guideline 10 of the Constitution (Bail Guidelines for Courts of judicature)(Practice) Directions, 2022 are the provisions of law that regulate the grant of mandatory bail by the High Court in offences triable only by the High Court.

Although the respondent stated that the applicant was committed to the High Court for trial, there is no record of such committal proceedings, nor has the respondent produced any other proof of committal. It is trite law that submissions are not evidence. The court is moved by proof of factual allegations. In those circumstances, this court will treat this as a matter where the applicant has not been committed to the High court for trial.

Article 23 (6) (c) of the **Constitution**, stipulates as follows:

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

- a) $\dots$
- b) $\dots$
- c) in the case of an offence triable only by the High Court, if that person has been remand 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.

Guideline 10 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022, provides:

- 1) Where an offence is triable only by the High Court, if a person has been remanded in custody in respect of that offence 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.
- 2) In the case of a person who has been on remand for one hundred and eighty days in accordance with Article 23(6)(c) of the Constitution, the Magistrate's Court shall immediately refer the file to the High Court.
- 3) For the avoidance of doubt, mandatory release on bail for offences triable by the High Court under Article 23(6)(c) of the Constitution shall be granted only by the High Court.

The Applicant was charged at the Nateete-Rubaga Court on the 9th of February 2023. He has been on remand to date. The One hundred and eighty days specified in Art 23 (6) (c) elapsed in August 2023.

In the result the applicant here qualifies for a mandatory release on bail. He states that he has three sureties: Namutibe Ruth; Batte Kigongo Saulo and Nakabazi immaculate. The introduction letters of the sureties, from local Council authorities,

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and Photostat copies of National Identity Cards have been produced. I have studied the same and I find them satisfactory.

Having weighed both sides in this matter, it is ordered that the Applicant be granted a mandatory release on bail in the following terms:

- 1. The Applicant shall execute of 1,000,000/- (one million shillings) NOT CASH.
- 2. Each surety is bonded in the sum of 5,000,000/- (Five million shillings) not cash.
- 3. The Applicant shall report to the Chief Magistrate of the Natete-Rubaga Court every first Monday of the month.
- 4. The Applicant shall not leave the jurisdiction of this Court without prior notification being given to the officer in Charge Police Sitting at Natete

Michael Elubu Judge 13.03.2024

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