

UGANDA / JUDGMENT

Tegga v Uganda (Criminal Miscellaneous Application 27 of 2023) [2023] UGHCCRD 27 (5 April 2023)

[2023] UGHCCRD 27

COURT

HC: Criminal Division (Uganda)

BEFORE

Kazibwe, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 27 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MUBENDE CRIMINAL MISCELLANEOUS
APPLICATION NO.0027 OF 2023 [Arising from KASANDA CRIM CASE 128/2022. CRB
966/2022]

TEGGA ALEX

APPLICANT

VERSUS

UGANDA

RESPONDENT

BEFORE HON JUSTICE MOSES KAZIBWE KAWUMI

RULING

The Applicant stands charged with Aggravated Defilement contrary to Sections 129(3)&(4) of the Penal Code Act and has applied for bail citing Article 23(6)(a)(C), 28(1) and 44(C) of the Constitution. Section 14 of the Trial on Indictments Act and other the enabling legislation.

The grounds of the Application which are further reiterated in the Affidavit filed in support by the Applicant are:-

- 1. That he has substantial sureties ready to stand for him to ensure that he does not abscond from trial and his right to a fair and speedy trial enshrined in the Constitution has been infringed by the state.
- 2. That he has a fixed place of abode at Lugini village, Lugini Parish. Kijuma sub- county in Kasanda District within the jurisdiction of the court and has not been committed to the High Court for trial within the six months period stipulated in the law.
- 3. That it is in the interest of justice that he is released on bail pending trial.

In the Affidavit supporting the Application the applicant states that he is 37 years old and was charged with the offence on 18th August 2022 but has not been committed for trial for now 8 months.

Representation.

The Applicant was represented by Ms. Asia Mbetabye. The Respondent was represented by Mr. Kakooza Fred (Assistant DPP).

Counsel for the Applicant reiterated the Applicant's constitutional right to apply for bail emphasizing the eight months period he has spent on remand without being committed to the High Court for trial. It was further emphasized that the applicant has a fixed place of abode within the jurisdiction of the court and has sureties to ensure that he does not abscond from trial.

Counsel for the Respondent did not oppose the application and left it to the discretion of the court for an appropriate decision.

Decision.

I have considered the averments in both the Application and the affidavit in support sworn by the Applicant. I have also carefully considered the submissions made by Counsel for the Applicant.

It is trite law that any accused person is entitled to apply for bail under Article 23(6)(a) of the Constitution. The Court has the discretion to either grant or deny that person bail. This is premised on the principle that the accused person is presumed innocent until he either pleads guilty or is found guilty after the due process under Article 28(3) (a) of the Constitution.

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The Applicant is charged with an offence triable only by the High court. Article 23(6)(\$c\$) of the Constitution provides;-

"Where the accused has been in custody for 180 days on an offence triable by the High Court only and has not been committed to the High Court for trial, that person shall be released on bail on reasonable conditions."

The wording of Article 23(6)(C) of the Constitution denies court of any discretion as to whether to grant bail or not. The court is only restricted to the determination of what may be reasonable terms given the peculiar circumstances of each case.

The mandatory release on bail pending trial for an applicant who has not been committed to the High Court for trial within the stipulated six months period is further emphasized in Guidelines 9 and 10(1) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022. Legal Notice No.8 of 2022.

The Applicant is confirmed to have a permanent place of abode at Lugini Village, Lugini Parish, Kijjuna Sub County in Kassanda District and produced a letter of introduction as a resident authored by a one Sanvula Jamali the Village Chairman.

The Applicant produced two sureties:-

- i) Munyaneza Innocent, 38 years old and a resident of Lugini Village and a brother of the Applicant. He holds National Identity Card Number CM PM 85031107L35J. The Surety furnished court with a Letter of Introduction by the Village Chairman and can be accessed on Telephone numbers 0705 702559.
- ii) Kibuule Jude, 48 years old and a resident of Lugini Village, a brother of the Applicant The Surety holds National Identity Card Number CM 74036109UJWL. He produced a letter of introduction

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authored by Chairman Sanvula Jamali and can be contacted on Telephone numbers 0784981661.

The sureties presented are adults who reside in the same locality with the Applicant and fully understood their obligations. They have no known antecedents and produced documents introducing them. I find no reason not to deem them suitable for purposes of this application.

I grant bail to the Applicant on the following terms:-

- a) The Applicant shall deposit in court a sum of Uganda Shillings \$2,000,000/- in cash.
- b) Each of the two sureties is bound in the sum of Uganda Shillings \$30,000,000/- not cash.
- c) The Applicant shall report to the Assistant Registrar at Mubende court every \$th day of the month or on the next working day if the date falls on a weekend or a Public holiday.

Moses Kazibwe Kawumi Judge 5th April 2023

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