

UGANDA / JUDGMENT

**Zura v Uganda (Criminal
Miscellaneous Application 27 of
2024) [2024] UGHC 576 (4 July 2024)**
[2024] UGHC 576

COURT

High Court of Uganda

BEFORE

Lubega, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 27 of 2024

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THE REPUBLIC OF UANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE

CRIMINAL MISCELLANEOUS APPLICATION NO. 027 OF 2024

(ARISING FROM KAPCHORWA CRIMINAL CASE NO: AA 40 OF 2023)

ZURA YAPYEYO ::::::::::::::::::::

VERSUS

UGANDA ::::::::::::::::::::

BEFORE: HON. LUBEGA FAROUQ

RULING

1. Introduction

- 2. The Applicant referred to as A2 on the indictment was indicted with the offence of murder contrary to sections 171 and 172 of the Penal Code Act Cap 128.

- 3. According to the summary of the case, the body of the deceased a relative to the Applicant was found lying dead in the forest by the young boys who had gone to fetch firewood. The matter was then reported to the LC.1 chairperson and the first people to be suspected to have been behind the killing of the deceased were the entire family and relatives of the deceased. The reason for suspecting them was because they lived in a bad relationship with the deceased for many years over witch craft related matters.
- 4. Following the above background, the Applicant was remanded to prison on 11th October, 2023 and later was committed to this court for trial.
- 5. The Applicant being aware of her right to bail, applied to this court under Article 23 of the Constitution of Uganda, the Trial On Indictment Act Cap 25 and Rules 2 and 3 of the Criminal Procedure (Application) Rules S. I. 13-8 for orders that-

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- (a) The Applicant be released on bail pending the hearing and determination of the charges preferred against her.
- 6. The Application is supported by the affidavit in support sworn by the Applicant and the grounds are briefly-
- (a) That the Applicant has constitutional right to apply for bail;
- (b) That the Applicant has a fixed place of abode and will not abscond if released on bail;
- (c) That the Applicant has substantial sureties;
- (d) That the Applicant denies having committed the offence and has not pleaded guilty, thus is still presumed innocent;
- (e) That the Applicant has no any other charges against her pending in any court.
- 7. In the affidavit in reply sworn by Mugisha Peter a Senior State Attorney, the Respondent opposed the Applicant's Application on the ground that the Applicant is indicted with a serious offence of murder which attracts a death sentence on conviction. He added that the Applicant is already committed to the High Court therefore there is a high likelihood of the Applicant absconding and rendering the trial nugatory once granted bail.
- 8. The Respondent averred that it is not true that the Applicant has a fixed place of abode since there is no proof attached in respect of the same.
- 9. The Respondent averred that the Applicant has no substantial sureties since the documents attached are subject to verification and are not by themselves proof of substantiality.
- The Respondent further averred that the Applicant has not 10. advanced any exceptional circumstances to warrant grant of bail.

- 11. He prayed that the Application be dismissed.

Legal representation 12.

Counsel Molly Allan represented the Applicant whereas Nakatudde 13. Maria State Attorney holding brief for Obbo Patrick represented the Respondent.

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14. Analysis of Court

Article 28 (3) (a) of the Constitution of Uganda provides that-15.

> "Every person who is charged with a criminal offence shall—

> (a) be presumed to be innocent until proved guilty or until that person has pleaded guilty..."

Article 23 (6) (a) of the Constitution of Uganda provides that-16.

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

> (a) the person is entitled to apply to the court to be $\frac{1}{2}$ released on bail, and the court may grant that person* bail on such conditions as the court considers reasonable..."

Section 15 (1) of the Trial On Indictment Act provides that-17.

> "The High Court may at any stage in the proceedings" release the accused person on bail, that is to say, on taking from him or her a recognizance consisting of a bond, with or without sureties, for such an amount as is reasonable in the circumstances of the case, to appear *before the court on such a date and at such a time as is* named in the bond..."

18. Section 16 of the Trial On Indictment Act provides that-

> "(1) Notwithstanding 15, the court may refuse to grant bail to a *person accused of an offence specified in subsection (2) if he or she does not prove to the satisfaction of the court—*

> (a) that exceptional circumstances exist justifying his or her release on bail; and

(b) that he or she will not abscond when released on bail.

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(3) In this section, "exceptional circumstances" means any of the following—

(a)*grave illness certified by a medical officer of the prison or other* institution or place where the accused is detained as being incapable of adequate medical treatment while the accused is in *custody;*

(*b*)*a certificate of no objection signed by the Director of Public Prosecutions; or*

(c) the infancy or advanced age of the accused.

\$(4)\$ In considering whether or not the accused is likely to abscond, the court may take into account the following factors-

- (a) whether the accused has a fixed abode within the jurisdiction of *the court or is ordinarily resident outside Uganda;*
- (b) whether the accused has sound securities within the jurisdiction to undertake that the accused shall comply with the conditions of *his or her bail:*
- (c) whether the accused has on a previous occasion when released on bail failed to comply with the conditions of his or her bail; \$and(d)\$ *whether there are other charges pending against the* accused.

19. Fixed Place of abode

20. The Applicant averred under paragraph 4 of the affidavit in support that she has a fixed place of abode at Moyok Cell, Tongwo Ward, West Division, Kapchorwa Municipality in Kapchorwa District. She attached annexure "B" which is a letter from the office of the chairperson Kapchai Clan, Kalulu Zone in Kapchorwa District dated 30th of January, 2024. In

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that letter, the chairman of the clan indicated that the Applicant together with her husband permanently reside at the aforesaid place on a customary land which was given to them by their parents.

- 21. The Applicant further averred that she is customarily married to Mukungu Mustafa with whom she has a child and with whom she was residing with before her arrest.
- 22. The Applicant's evidence was buttressed by Mukung Mustafa in his affidavit as a surety where he averred under paragraphs \$6\$, \$7\$ and \$8\$ that he knows the Applicant as his wife and mother of his daughter whom he traditionally married in 1994 and by the time of her arrest, they had lived together as husband and wife for 30 years. That he constructed a home for the Applicant at Moyok Cell, Tongwo Ward, Western Division, Kapchorwa Municipality in Kapchorwa District.
- 23. He added that he has other 2 homes he constructed for his two wives that is one at Sosho Cell for the 2nd Wife and the 1st wife at Malat Village all in Kapchorwa District.
- 24. The Applicant's evidence was further corroborated by the introductory letter from LC.1 chairperson of Moyok Cell Tongwo Ward, Western Division in Kapchorwa Municipality which confirmed that the Applicant has lived in that area for a long period of time.

25. In Miscellaneous Application No. 36 of 2024 Cheptai Nabil V. Uganda this court while referring to Kanyamunyu Mathew Mugoma Vs Uganda High Court Miscellaneous Application 177 of 2017 and Uganda Vs Col. Rtd Kizza Besigye Constitutional Reference No.20 of 2005 stated that to prove a fixed place of abode, one must satisfy that the place where he or she was residing before arrest has some degree of permanency which can be proved through evidence of ownership like tendering in court; utility bills, purchase agreement, letter from the clan leader in case of customary ownership, tenancy agreement and duplicate certificate of title.
26. In the present case, the Applicant adduced in court a letter from the chairperson of the clan indicating that before her arrest she was residing

with her husband on a customary land which was given to them by their parents. The letter was further corroborated by an introductory letter from the LC.1 chairperson of the area. To this court, considering the nature of ownership of land in that area, a letter from the clan chairperson is sufficient to prove a permanent place of abode.

27. In the view of the above, the Applicant has proved that she has a permanent place of abode within the jurisdiction of this court.

28. Substantial Sureties

- 29. The Applicant averred under paragraph 10 of her affidavit in support that she has substantial sureties who will make sure that she attends court as and when she will be needed. The sure include-
- 30. **Surety No. 1: Mukungu Mustafa** aged 67 years of age, a farmer, a resident of Sosho Cell, Moyok Cell and Malat village in Kapchorwa District a muslim man with three wives and homes. He attached his National Identification Card with NIN CM55014101UGVD and LC.1 introductory letter from Sosho Cell chairperson where he was introduced as a husband to the Applicant. That piece of evidence was further confirmed by Mukungu Mustafa in the affidavit he swore as a surety dated 28th of March, 2024. He also stated his telephone number to be 0777640905.
- 31. **Surety No. 2: Cheptoek Yasin** aged 44 years, a farmer and a resident of Malat Village, Ngamgata Parish, Kaptanya Subcounty in Kapchorwa District where he was born and raised. He stated in his affidavit that he knows the Applicant as his step mother being the \$3rd wife to his father Mukungu Mustafa. He attached his national identification card with NIN CM80014101KZ7C and an introductory letter from the LC.1 chairperson. He also indicated his telephone number to be 0777282897.
- 32. **Surety No. 3: Chebet Hawa** aged 45 years, a farmer, a biological sister to the Applicant and a resident of Kapkwitabas village, Sirimityo Parish, Kaserem Sub-county in Kapchorwa District where she got married and resided for over 28 years. She attached her national identification card with NIN CF790141022ZZC and an introductory letter from LC.1

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chairperson of Kapkwitabas village. She also indicated her telephone number to be 0784260506

Regulation 15 of the Constitution (Bail Guideline for Courts of 33. Judicature) (Practice Direction), 2022 provides that-

> "When considering the suitability of a surety, the court shall *take into account the following factors—*

(a) the age of the surety;

(*b*) *work and residence address of the surety;*

(*c*) *character and antecedents of the surety;*

(*d*) *relationship to the accused person; and*

(e) any other factor as the court may deem fit.

(2) Subject to subparagraph

(1) the proposed surety shall provide documentary proof includina—

(a) a copy of his or her national identity card, passport or aliens *identification card;*

(b) an introduction letter from the Local Council 1 Chairperson *of the area where the surety is ordinarily resident; or* (c) asylum seeker or refugee registration documents issued by the Office of the Prime Minister..."

34.

Following the above provision of the law, in the instant case, according to the averments of the sureties and national identification cards, all the sureties are older than the Applicant, they are all farmers, they have been described as persons of good character by their respective area chairpersons, and they are closely related to the Applicant being a husband, son and sister respectively. The sureties have further attached their national identification cards and introduction letters from LC.1 chairpersons indicating they are all residents of Kapichorwa District. Hence, fulfilling all the conditions stipulated in the provision above.

35. In the circumstance, I have no viable reason to reject the Applicant's sureties and they are all found to be substantial.

- Gravity of the offence and whether the offence for which the 36. Applicant is charged involved violence.

- 37. The above conditions are some of the conditions that Regulation 13 of the Constitutional (Bail Guidelines) (Supra) require this court to consider when deciding whether to grant bail or not.

38. Gravity of the offence

- 39. The Applicant is charged with the offence of murder contrary to sections 171 and 172 of the Penal Code Act which is a capital offence with a maximum penalty of death upon conviction.
- It is however apparent that following Article 28(3)(a) of the 40. Constitution, the gravity of the offence cannot bar grant of bail to the Applicant since the law presumes her innocent until proved guilty or until she pleads guilty.

41. Whether the Offence with which the Applicant is charged involved violence.

42. As already noted in the preamble of this ruling, the deceased whom the Applicant is alleged to have killed was found dead in the forest by the boys who had gone to fetch firewood. There is no violence whatsoever described by the Respondent in the summary of evidence.

43. Exceptional Circumstances

There is no any exceptional circumstance raised by the Applicant. 44.

- Therefore, the Applicant having proved that she has a fixed place of 45. abode with some degree of permanency within the jurisdiction of this court and with substantial sureties, I have been inclined to grant this Application for bail in the following terms-
- (a) The Applicant shall pay a cash bond of Ugx: \$2,000,000/\$ = (Two Million Shillings)
- (b) Each of the surety is bonded with a non-cash bond of Ugx: \$10,000,000/\$ = (ten million shillings).
- (c) The Applicant shall further report to the Deputy Registrar of this court every month starting 3rd of August, 2024.

I so order.

Ruling delivered in open court in the presence of both parties and their Advocates on 4th day of July, 2024.

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Prepared on 12 October 2026 · Esheria