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The Republic of Uganda

In the High Court of Uganda at Soroti

Criminal Miscellaneous Application No. 0022 of 2024

(Arising from Criminal Session Case No. 0442 of 2022)

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1. Okiring Stephen

2. Muron John

3. Osire Emmanuel

..... Applicants

Versus

Uganda ..... Respondent

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Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

1. Introduction.

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This is an application brought by notice of motion under Articles 20(2), 23(6)(a) & 28 (1) & (3)(a) of the Constitution of the Republic of Uganda 1995, Section 17(2) of the Judicature Act and Section 14(1) of the Trial on Indictment Act for orders that;

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The applicants remanded for the offence of Aggravated Robbery contrary to sections 285 and 286(2) of the Penal Code Act be released on bail pending trial and consequential directions be issued to regulate the bail.



5        2. Grounds.

The grounds of this application as set out in the application and supporting affidavits sworn by the applicants are that;

- a) The applicants have a constitutional right to apply for bail.
- b) That the applicants are presumed innocent until proven otherwise.
- 10       c) That the applicants have been in detention since the 4<sup>th</sup> day of March 2022 and were committed to the High Court for trial on the 10<sup>th</sup> day of August 2022 but the hearing date has not been fixed.
- d) The applicants have fixed places of abode at Kabata Cell, Kabata Ward, North Division, Kumi Municipality in Kumi District and Angopet Cell, Bazaar  
15       Ward, North Division, Kumi Municipality in Kumi District within the jurisdiction of this Honourable Court.
- e) The applicants have two sureties who have undertaken to abide by all terms and conditions that may be set by this Honourable Court.
- f) The applicants will not interfere with any of the witnesses of the  
20       prosecution or any evidence to be tendered in support of the charge.

The respondent did not file an affidavit in reply despite being served with the application. The affidavit of service on record dated 22<sup>nd</sup> of April 2024 indicates that the ODPP was served with the instant application however the deponent failed to attach the return copy to the affidavit of service.

25       3. Representation.

The applicant was represented by M/s Obore & Co. Advocates.

5      4. Determination.

The presumption of innocence is the primary principle for which a court may, in the exercise of its discretion, release an accused person on bail pending trial as stated Article 28(3)(a) of the Constitution of the Republic of Uganda, 1995 which provides that;

- 10    **Every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty or until that person has pleaded guilty.**

Article 23(6)(a) of the Constitution of the Republic of Uganda provides that:

- 15    **Where a person is arrested in respect of a Criminal Offence, he 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.**

In their individual affidavits the applicants conceded to this Honourable Court's discretion to release them on bail pending the hearing of their case.

- 20    Capital offences such as aggravated robbery in this instant application are bailable; however, whether the court is inclined to exercise the discretion to grant or not is a matter dependent on the circumstances of each case.

- 25    Section 14(1) of the Trial on Indictments Act, Cap 23 provides the stance outlined in Article 23 (6) (a) of the Constitution. It underpins this Court's discretion to release an accused person, at any stage of the proceedings, on taking from him or her a recognisance 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.

The Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 under paragraph 5 provide for the general principles applicable in the consideration of a bail application thus;

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5 The court shall, in considering a bail application, be guided by the following principles as enshrined in the Constitution—

(a) the right of an applicant to be presumed innocent as provided for in article 28 (3) (a) of the Constitution;

(b) the applicant's right to liberty as provided for in article 23 of the Constitution;

10 (c) the applicant's obligation to attend trial;

(d) the discretion of court to grant bail on such terms and conditions as the court considers reasonable; and

(e) the need to balance the rights of the applicant and the interests of justice.

Paragraph 12 of the Constitution (Bail Guidelines for Courts of Judicature)

15 (Practice) Directions provides for contents of a bail application thus;

An application for bail shall contain the particulars of the applicant, accompanied by—

(a) a copy of the applicant's national identity card, or passport or aliens identification card, or employment card, or student identity card;

20 (b) an introduction letter from the Local Council 1 chairperson of the area where the applicant resides;

(c) where applicable, asylum seeker or refugee registration documents issued by the Office of the Prime Minister; and

(d) expounded grounds for the application.



5 Section 15(1) of the Trial on Indictment Act provides thus;

Notwithstanding section 14, 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
- 10 (b) that he or she will not abscond when released on bail.

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;
- 15 (b) a certificate of no objection signed by the Director of Public Prosecutions; or
- (c) the infancy or advanced age of the accused.

However, these special circumstances have been found non-mandatory.

Section 15(4) provides

20 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 sureties within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail;
- 25 (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.

5 In deciding to grant or not to grant bail to the applicant, the court is enjoined to consider the accused's demonstration that they will not abscond trial by considering the above factors, which are examined one by one.

a. Fixed place of abode.

Okiring Stephen under paragraph 7 of his affidavit in support states that he has  
10 an introduction letter from the LC1 Chairperson Kabata Cell, Kabata Ward, North Division, Kumi Municipality in Kumi District which confirms that he is a resident of that area. Annexure 'A' to his affidavit is an introduction letter dated 15<sup>th</sup> of March 2024 from the LC1 Kabata cell which indicates that he is resident of Kabata cell and he stays with his biological parents Ocoobe Gabriel and Arionget Jennifer  
15 Harriet.

Muron John under paragraph 7 of his affidavit in support stated that he is a resident of Kabata Cell, Kabata Ward, North Division, Kumi Municipality in Kumi District. Annexure 'B' to his affidavit is an introduction letter from the LC1 Chairperson Kabata cell dated 15<sup>th</sup> of March 2024, and it indicates that he is a  
20 resident of Kabata Cell staying in the same home with his biological parents Ocoobe Gabriel and Arionget Jennifer. The LC1 chairman further confirms in this letter that Muron has a fixed place of abode in his area.

Muron further attached a copy of his national ID CM92021108V7WG indicates he is 32 years old and a resident of Odiding village, Kabata ward, North Division  
25 in Kumi.

Osire Emmanuel under paragraph 7 of his affidavit states that he is a resident of Angopet Cell, Bazaar Ward, North Division, Kumi Municipality in Kumi District. Annexure 'C' to his affidavit is an introduction letter dated 15<sup>th</sup> of March 2024



5 from the LC1 chairperson Angopet cell indicating that Osire is a true resident of his area.

He further attached a copy of his voter location slip which though expired indicates him as 28 years old and a resident of Angopet village, Bazaar ward in Kumi District.

10 The essence of a fixed place of abode is traceability of an accused in the event of abscondment or whenever necessary.

Section 15(4) (a) of the Trial on Indictment Act provides that in considering whether an accused is likely to abscond court may take into consideration whether the applicant has a fixed place of abode within the jurisdiction of the  
15 court. This is amplified by paragraph 13 (k) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions.

While the law does not define the phrase '*fixed place of abode*' what is important is that the fixed place of abode must be within the jurisdiction of the court considering the bail application.

20 Where the applicant fails to prove this under section 15(1) of the TIA the court may deny him bail.

The applicants having presented introduction letters from the LC1 chairpersons where they are resident which letters indicate that they are true permanent residents of these areas have proved fixed place of abode.

25 b. Sureties.

Okiring Stephen presented two sureties under paragraph 8 of his affidavit and counsel presented their details in his submissions; Arionget Jennifer Harriet his biological mother and Odelok John his paternal uncle both resident of Kabata Cell, Kabata Ward, North Division, Kumi Municipality in Kumi District.

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5 Letters of introduction dated 15<sup>th</sup> March 2024 from the LC1 Kabata cell were attached as 'A2' and 'A4'. 'A2' indicates that Arionget Jennifer Harriet is a resident of Kabata Cell and is a biological mother of Okiring Stephen, that she is good woman and she has no criminal record. 'A4' indicates that Odelok John Charles is the paternal uncle of Okiring and a resident of his area.

10 'A1' is a copy of Arionget's national ID CF690211033K1J and it indicates that she is 55 years old and a resident of Kabata village in Kumi.

'A3' is copy Odelok's national ID CM73021103QDPJ and it indicates that he is 51 years old and a resident of Kabata village in Kumi.

Muron John presented two sureties under paragraph 8 of his affidavit and  
15 counsel presented their details in his submissions; Ocoobe Gabriel his biological father and Oumo Simon his paternal uncle both residents of Kabata Cell, Kabata Ward, North Division, Kumi Municipality in Kumi District.

Letters of introduction dated 15<sup>th</sup> March 2024 were attached as 'B2' and 'B4'. B2  
20 a letter from the LC1 chairperson Kabata cell indicates that Ocoobe Gabriel is the biological father of Muron John and a true resident of Kabata cell. B4 a letter from the LC1 chairperson Odiding village, Kabata ward, North division in Kumi indicates that Oumo Simon is a true resident of this area and is an uncle to Muron John.

'B1' is a copy of Ocoobe's national ID CM7702110068VC and it indicates that he is 47 years old and a resident of Kabata village.

25 'B3' is a copy of Oumo's national ID CM62021102KLTA and it indicates that he is 62 years old and a resident of Odiding village.

Osire Emmanuel presented two sureties under paragraph 8 of his affidavit and counsel presented their details in his submissions; Okoche Paul his biological father and Ajemo Mary his biological mother both residents of Angopet Cell,



5 Bazaar Ward, North Division, Kumi Municipality in Kumi District. Annexures 'C2' and 'C4' are letters of introduction dated 15<sup>th</sup> of March 2024 from the LC1 Chairperson Angopet Cell and they both indicate that Okoche Paul and Ajemo Mary are true bonafide residents of his area and they are standing as sureties for their biological son Osire Emmanuel.

10 Annexure 'C1' and 'C3' are copies of their national IDs, Okoche Paul CM69021100C2JD aged 55 years and Ajemo Mary CF80058100X1FH aged 44 years. Their IDs indicate them as residents of Angopet village.

A "surety" is defined under Paragraph 4 of the Constitution (Bail Guidelines for Courts of Judicature) Practice Directions to mean **a person who undertakes to**  
15 **ensure that the applicant will appear in court and abide by the bail conditions and who furnishes security which may be forfeited to State if the applicant fails to appear in court.**

Furthermore, Section 15 (4)(b) of the Trial on Indictment Act and paragraph 13(1) (l) of the Constitution (Bail Guidelines for Courts of Judicature) Practice Directions  
20 provides that in considering whether an accused is likely to abscond the court shall consider whether the accused has sound sureties within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail.

Paragraph 15 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions provides for determinants on the suitability of a surety thus;

25 **(1) 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;**

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5 (d) relationship to the accused person; and

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

(2) Subject to sub-paragraph (1) the proposed surety shall provide documentary proof including—

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

10 (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.

The applicants in their individual affidavits that the sureties presented to court  
15 understand their duties and responsibilities and are willing to undertake any conditions set by this Honorable court.

Counsel additionally submitted that having labored to explain to the sureties their obligations and consequences of failure to ensure that the accused person attends court, they understood the same and he prayed court finds them  
20 substantial.

The sureties have all sufficiently proved fixed place of abode, their relationship to the applicants and their age. I thus find that they are substantial.

The sureties herein are to ensure the attendance of the accused person before court whenever required, have a duty to sign the bail bond form. They are also  
25 duty bound to inform court where an accused person is not able to attend and are liable to pay the bail bond sum should they fail to ensure the attendance of the accused person before court.

5. Conclusion.



5 On the basis of the evidence put forward, the severity of the offence having been considered, court is satisfied that this is a case where it should exercise its discretion and grant bail to the three applicants pending their trial. Bail is accordingly granted on the following conditions;

a) Cash bond of Shs. 2,000,000/- for each applicant.

10 b) Each of the Sureties is bound in the sum of Shs. 10,000,000/- not cash.

c) The applicants and each of their sureties are to provide a recent photograph, telephone numbers and copies national IDs to the Registrar of this court and to the Chief Resident Soroti for filing and record purposes.

15 d) The Applicants are to report to the Registrar of the Court once a month on the first Monday of each month with effect from 05/08/2024 until otherwise directed by court.

I so order.



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.....  
Hon. Justice Dr Henry Peter Adonyo

Judge

3<sup>rd</sup> July 2024