

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL DIVISION
CRIMINAL MISC. APPLICATION NO.020 OF 2023

5 **1. MACKENZIE LEIGH MATHIS SPENCER**

2. NICHOLAS SCOTT SPENCER-----APPLICANTS

VERSUS

UGANDA-----RESPONDENT

10 **RULING**

BEFORE HON: JUSTICE ISAAC MUWATA

Background

The applicants are jointly charged with the offences of aggravated trafficking in children contrary to section 3(1)(a) of the Trafficking in Persons Act 2009 and aggravated torture contrary to section 5(h), (j) (k) of the Prevention of Torture Act 2012.

They filed this application seeking to be released on for bail under Article 23(6)(a) of the Constitution, Section 14 of the Trial on Indictment Act and Rule 2 of the Constitution (Bail Guidelines for Courts of Judicature) Practice Directions 2022.

Applicant’s grounds in support.

The grounds of the application are briefly that the applicants are responsible citizens of the United States of America and are of good character.

The applicants contended that they have serious pre-existing medical conditions that necessitate treatment outside of prison. They also stated that

they will not interfere with any investigation being conducted by the prosecution and that they will present themselves before the High Court for trial.

30 The applicants also stated that they are willing to comply with the bail conditions imposed by this court and have substantial sureties to ensure that they do so once released on bail.

Respondent's grounds in opposition

The respondent opposed the application and asserted that they had proof the applicants had committed the alleged offenses. They noted that because
35 the applicants are foreign nationals without any ties to the Ugandan community, they pose a flight risk.

They added that there was a strong risk of the applicants absconding because the offenses they are charged with are serious and carry a potential death sentence if convicted.

40 The respondent added that the applicants were not law-abiding citizens because they had continued to work and reside in Uganda unlawfully even after the expiration of their work permits. They prayed that the application be denied.

Representation

45 At the hearing of the application, Mr. Mpanga David represented the applicants while Mr. Joseph Kyomuhendo together with Mr. Amerit Timothy appeared for the respondent.

The parties also filed their written submissions which I shall refer to in the course of determining this application

50 **Consideration**

The respondent raised an objection in his submission as to whether the application was properly before this court. He argued the matter should be before the International Crimes Division of the High Court and not the Criminal Division of the High Court.

55 The matter was raised after the court had already entertained the bail application. The parties have already submitted to the jurisdiction of the court by filing their respective pleadings and attending the hearings. I am therefore constrained to make a ruling on this matter

I must determine the matter as presented to the court.

60 The right to apply for bail is set out under **Article 23(6) (a) of the Constitution**. It provides that

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

**“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
65 considers reasonable.’**

The granting of bail by court to an accused person is essentially an act of the exercise by court of its discretionary powers. The court considers all that is before it regarding the application and reaches a decision based on the rules of reason, justice and law.

70 Rule 5 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions 2022 provides that;

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

75 (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;**

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

80 (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.**

The respondent objected to the applicants on the following grounds to which I shall address bearing in mind the principles stated above.

85 **That the applicant has not disclosed any exceptional circumstances to warrant their release on bail**

There is no requirement to prove existence of exceptional circumstances, but an applicant who established the same stands a better chance of being granted

90 The respondent argued that the medical documents presented by the applicants from the prison facility do not indicate whether the prison

authority is capable of providing adequate medical treatment to the applicants

The exceptional circumstances referred to include grave illness certified by a
95 medical officer of the prison or other institution or place where the applicant
is detained as being incapable of adequate medical treatment while the
applicant is in custody; a certificate of no objection signed by the Director of
Public Prosecution. **See: Rule 14(2) of the Constitution (Bail Guidelines
for Courts of Judicature) (Practice) Directions 2022**

100 I have perused both of medical reports from Murchison Bay Hospital marked
as **Annexures E and D** respectively relating to the applicant's health. The first
applicant's illness is considered complicated, while the second applicant's
chronic allergic bronchial asthma makes it difficult for him to be in a prison
environment owing to its stuffy conditions. The applicants also attached their
105 previous medical records which reveal a number of prior illnesses.

It is true that there is no indication by prison authorities in their reports that
they are unable to provide proper medical care, but there is also no evidence
to suggest that they can.

On the contrary, the medical report for the 1st applicant indicates that there
110 is uncertainty as regards to her medication. The prisons in essence cannot
guarantee the constant supply of her medication. The report also indicates
that she's allergic to the alternative medication currently available.

With the above diagnosis, it is necessary to give applicants the benefit of the
doubt because of their preexisting medical conditions which have not been
115 refuted.

Basing on that diagnosis, it is my considered opinion that the applicants will require medical attention outside the prison facility. The contention of the respondent as regards the health condition of the applicants is not which the court can rely since he is not a medical practitioner. It not within this court to
120 inquire into the applicants' medical histories beyond what has been presented before it. The court in any event always reserves the discretion to grant bail even in circumstances where the medical reports are not conclusive. The medical documents presented therefore in my view demonstrate existence of circumstances referred in Rule 14(2) of the
125 Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions 2022

That the applicants are at flight risk

The respondent hasn't shown any evidence to suggest that the applicants are at flight risk, thus this is a subject of speculation to which the court cannot
130 delve into.

According to the information presented in the supplementary affidavit submitted by the applicant's counsel, at the time of their detention, the applicants were actively renewing their work permits, which had expired on November 30, 2022. Evidence of this is marked as **Annexures A** on the
135 supplementary affidavit made by the applicant's counsel. This was not refuted by the respondent.

The applicants still enjoy the presumption of innocence; thus it cannot be out rightly stated that the applicants are not are law-abiding citizens when their matters are still before the courts of law.

140 **That the applicants lack substantial sureties**

The sureties appeared in court for purposes of identification, the court duly interviewed them to assess their substantiality. In considering the suitability of the sureties, the court should take in factors such as age, work character antecedents, relationship with the accused and any other factor the court
145 deems fit. The respondents did not object to the sureties at the time they were being interviewed by this court.

I considered their close relationship with the applicants since most of them worked closely together in the course of their employment and have social ties. There was nothing particular raised by the respondent except the issue
150 of their age in relation to the applicant. While age is important, the court must always consider other factors as a whole in assessing substantiality of sureties with the main emphasis being the sureties will ensure the applicants attendance in court.

The court in **Uganda (DPP) V Rtd.Dr. Kizza Besigye Constitutional Reference No.20 of 2005** has noted that bail should be refused
155 mechanically simply because the state wants such orders. The refusal to grant bail should not be based on mere allegations. The grounds must be substantiated.

Similarly, the offenses with which they are charged though grave and serious
160 are bailable, the applicants though foreigners enjoy the same presumption of innocence enshrined under Article 28(3) of the Constitution.

In view of the circumstances of the case, I find that this is a proper case for the grant of bail.

They are granted bail on the following conditions.

- 165 **1. Each of the applicants shall deposit a cash bail of shs. 50,000,000/= cash (Fifty Million Shillings).**
- 2. Each of the sureties shall execute a non cash bond of shs. 50,000,000/= (Fifty Million Shillings) not cash.**
- 3. Each of the applicants shall deposit their passports with the**
170 **Deputy Registrar of the High Court Criminal Division.**
- 4. The applicants should also not travel outside the country without the express permission of Court.**
- 5. The applicants shall report to the Deputy Registrar of the International Crimes Division of the High Court**

175 I so order.

JUDGE

22/03/2023