

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

HCT-00-CR-CM NO. 020 OF 2021
[ARISING OUT OF HCT- CR. ⁷¹⁷00-2020)

TUMWESIGYE NATHAN=====APPLICANT/ACCUSED

VERSUS

UGANDA=====RESPONDENT/PROSECUTOR

BEFORE HON. JUSTICE TADEO ASIIMWE

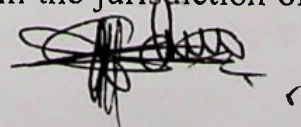
RULLING

This is an application for bail pending trial and is brought by way of Notice of Motion under Article 23 (6) (a) and 28(3)(a) of the Constitution, S. 14 (1) & 15 of the Trial on Indictments Act and rule 2 of the Judicature (Criminal Procedure) (Applications) Rules S.I. 13-8.

The applicant is indicted with the offence of rape contrary to section 124 of the penal code Act.

The grounds of the application as presented and supported by the affidavit of the applicant are as follows;

1. It is the constitutional right of the applicant to be released on bail pending the hearing of this trial.
2. That the applicant will not abscond once released on bail
3. That the applicant has a fixed place of a bode within the jurisdiction of this honorable court.



4. That the applicant has substantial and dependable sureties who are ready and willing to ensure he returns to court to face his trial as and when required.
5. That there are no further charges pending against the applicant.
6. That there is a high likely hood of delay before the trial of the applicant commences, which shall lead to the applicant to spend a prolonged period of detention.
7. That it is just and fair that this application is allowed and the applicant be released on bail.

At hearing, the applicant was represented by counsel Ssekalema Quasi While the respondent was represented by Adong Harriet State attorney form ODPP. Counsel for the applicant made written submission and made oral highlights of his submissions while the respondents counsel made oral submissions which I shall consider in this ruling.

In his submissions, counsel for the applicant argued that the applicant has a right to apply for bail under articles 8 and 28 of the constitution so as to protect his right to liberty. That the applicant has a fixed place of a bode within the jurisdiction of this court and will not abscond. That court has powers under section 14 of the T.I.A to grant the accused person bail.

On sureties, he submitted that the applicant has substantial surities viz- Owere Edson 31years an uncle to the applicant and Magezi Nelson 35years, a brother to the applicant and both have undertaken to fulfill their duties.

In reply, the learned state attorney submitted that it is true the applicant/ accused has a right to apply for bail but not a right to be granted bail.

On sureties she submitted that the sureties are not substantial as they have no introduction letters. She finally prayed that court dismisses this application.

RESSOLUTION.

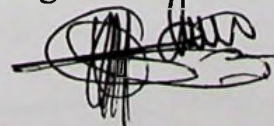
The rationale behind the grant of bail is in respect to upholding one's right to personal liberty. This is especially the product of the presumption of innocence as protected under Article 28 (3) of the Constitution of the Republic of Uganda. This was emphasized in the case of **Abindi Ronald and Anor v Uganda Miscellaneous Criminal Application No. 0020 of 2016**

“Under Article 28 (3) of the Constitution of the Republic of Uganda, every person is presumed innocent until proved guilty or pleads guilty. Consequently, an accused person should not be kept on remand unnecessarily before trial.”

A bail applicant must not be deprived of his/her freedom unnecessarily or as merely punishment where they have not been proved guilty by a competent court of law.

This principle of protection of personal liberty was further cemented in the case of Col (Rtd) Dr. Kizza Besigye v Uganda Criminal Application No.83 of 2016 wherein court stated that court has to consider and balance the rights of the individual, particularly with regard personal liberty...”

The Court's discretionary powers to grant bail are enshrined under Section 14 (1) of the Trial on Indictments Act and the conditions under which bail is to be granted under Section 15. These circumstances are broken down to proof of exceptional circumstances like grave illness, a Certificate of no objection from the Director of Public Prosecution, infancy or advanced age; and the fact that the accused will not abscond to be proved by the accused having a fixed place of abode, sound sureties, among others. However, it is trite law that proof of exceptional circumstances is not mandatory requirement as courts have the discretion to grant bail even when the exceptional circumstances have not been proved.



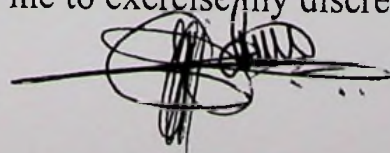
Hon. Justice Stephen Mubiru in the case of **Abindi Ronald and Anor v Uganda** was of the view that “An applicant should not be incarcerated if he has a fixed place of abode, has sound sureties capable of guaranteeing that he will comply with the conditions of his or her bail.”

In this application, the state Attorney objected to the sureties for lack of introductory letters. However, both sureties have introductory letters from their respective local council authorities. I am only not comfortable with the 2nd surety Tumwesigye Nathan for reasons that he stays in kibuli and the applicant stays in Mukonono. I am not convinced that he will be able to monitor the accused and ensure complainant complies with his bail conditions.

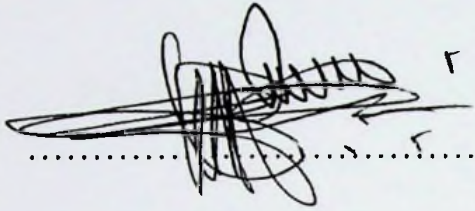
Court in the case of **Mugisha Ronald V Uganda HCT- 01-CR-CM-NO-050 of 2018** while granting an application for bail stated that;

“Since the sureties appear responsible persons who will ensure the accused returns to court to stand trial, and in view of the presumption of innocence under Article 28 (3) of the Constitution of the Republic of Uganda, 1995, I find and hold that this is a fit and proper case to grant bail to the Applicant.”

In this case, although the applicant has a fixed place of abode within the jurisdiction of this court, the 2nd surety is not substantial. Further the applicant was charged with a serious offence of Aggravated Robbery whose maximum sentence is death. The circumstances surrounding the offence were cruel as complainant was injured on the head with a metal. I am also conscious of the fact that the offence was committed at night and the complainant had a close interaction with the accused. In such circumstances the issues of identity may arise. I am weary of the safety of the complainant. I do not think this is a proper case for me to exercise my discretion in favor of the applicant.



For the above reasons I find no merit in this application and the same is hereby dismissed.



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TADEO ASIIMWE

JUDGE

1/04/2021