

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**CRIMINAL APPLICATION NO. 27 OF 2021**  
**(ARISING FROM MAK-CO-365/2021)**

**MUKALAZI RONALD**.....**APPLICANT**

**VERSUS**

**UGANDA**.....**RESPONDENT**

**BEFORE: HON. MR. JUSTICE TADEO ASIIMWE**

**RULLING**

This is an application for bail brought under section 14(1) & 15 of the Trial on Indictments Act CAP 23, Article 23 & 28 of the constitution, Rules 2&4 Criminal Procedure (Applications) Rules S.I 41-1.

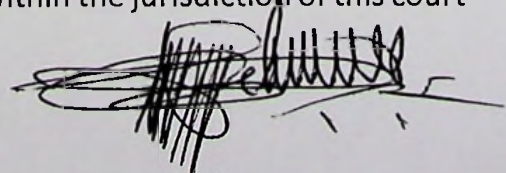
**BACKGROUND**

The applicant was arrested on the 5<sup>th</sup> day February 2021 and charged with the offence of Aggravated Trafficking in Children and remanded to Kitalya Government prison hence this application seeking to be released on bail.

The application is supported by an affidavit of Mukalazi Ronald the applicant, who is the accused in Criminal Case No. 0365/2021 at Makidye court.

The applicant was represented by counsel Nampijja Ruth while the respondent was represented by Adong Harriet, a State Attorney.

In support of the application, counsel for the applicant submitted that her client is suffering from asthmatic attacks which require medical care from outside the prison hence a need for release on bail. she further submitted that the applicant has a fixed place of abode at Luwafu Kizungu LC1 within the jurisdiction of this court



and substantial sureties. She relied on section 14(1) of the TIA which empowers this court with authority to grant bail to the accused person who is presumed innocent in accordance with article 28(3)(a) of the constitution. She further cited section 15(1) of the TIA arguing that exceptional circumstances exist justifying release of the applicant who is suffering with grave illness which has been certified by the prison medical officer as per annexure E to the pleadings.

In reply, learned State Attorney, agreed that this court has powers to grant bail to the accused person upon proof of exceptional circumstances. She however disagreed that the accused's condition of asthma in this case does not amount to "grave illness" within section 15 of the T. I. A. She further objected to the sureties who did not provide their telephone contacts. In the alternative she prayed for stringent terms if this court is to grant this application.

#### **RESSOLUTION.**

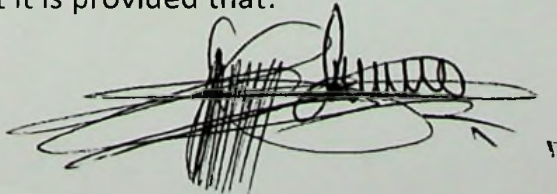
An accused person is presumed to be innocent until proved guilty by a competent court and or until such accused pleads guilty to the charge voluntarily. This presumption is enshrined in Article 28(3)(a) of the Constitution. In the same Constitution, it is provided under Article 23(l)(b) and (c) that no person shall be deprived of his personal liberty except

(b) in execution of the order of a court made to secure the fulfillment of any obligation imposed on that person by law, and

(c) for the purpose of bringing that person before court in execution of the order of a court or upon reasonable suspicion that the person has committed or is about to commit a criminal offence under the laws of Uganda.

Section 14 of the T. I. A. gives the High Court powers to grant bail to an accused person on taking from him such recognizance, with or without sureties to appear before the court on such a date and time as the court may order.

under section 15 of the Trial Indictments Act it is provided that:

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Notwithstanding section 14 of the T.I.A, the court may refuse to grant bail to a person accused of an offence specified in subsection (2) of this section, if he does not prove to the satisfaction of the court that exceptional circumstances exist justifying his release on bail, and that he will not abscond when released on bail.

Exceptional circumstances under section 15 (3) (1) of the Act is defined to include:

*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, the certificate of no objection signed by the Director of Public Prosecutions, the infancy or advanced age of the accused.*

In this application the applicant pleaded "exceptional circumstances" to constitute an asthmatic attack certified by a medical report from Kituya Government prison.

The said medical report annexure E in conclusion stated that; -

**" since admission in to prison, he has developed recurrent asthmatic attacks which have been managed with inhalers"**

The doctor's report was very clear that the illness asthmatic attacks was being managed at the place of detention and there is no mention in that "report" that the asthma which the applicant has advanced constitute, in the words of section 15 (3)(a) of the Trial on Indictments ACT, "grave illness" and are incapable of adequate medical treatment while the accused in custody".

In the case of **Tigawalana Bakali (Criminal Application-23/2003)** this Court referred to other earlier decided cases declined to grant bail on the grounds that the applicant had not satisfied court that asthmatic illness complained about by the applicant was incapable of being treated in the prison or custody where the prisoner was being held. The court held that any discomfort caused by the diet and congestion in accommodation do not amount to "exceptional circumstances" stipulated under section 15(3)(a) of the T.I.A.

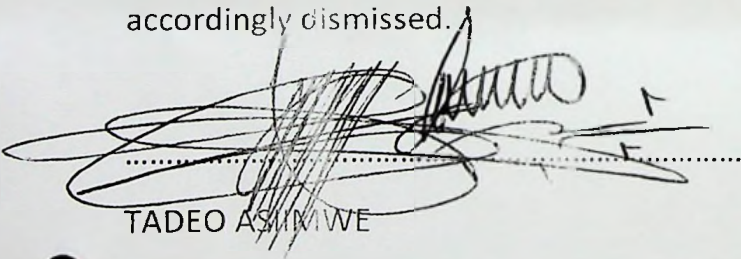
In this case although I am satisfied that the applicant has a fixed place of abode and has substantial sureties who are his relatives, I find that the applicant has not adduced sufficient evidence to the satisfaction of the court that he is suffering from such grave illness which cannot be treated in prison where he is currently being detained as required by law.

Although this application was based on sections 15(3)(a) of the T.I.A on medical grounds which have not been proved, this court has discretionally powers to grant bail since proof of exceptional circumstances is not mandatory.

However, in the instant case, the applicant faces serious charges of aggravated trafficking in children whose maximum sentence is death and investigations are in early stages the accused having been in custody for only forty-three (43) days. There is a likely hood that the applicant will interfere with the investigation process.

I therefore find it not proper to release the applicant on bail in the circumstances.

In conclusion I find no merit in this application for grant of bail and the same is accordingly dismissed.



TADEO ASIMWE

JUDGE

18/03/2021