

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
HCT-00-CR-CM NO. 055 OF 2021
(ARISING OUT OF KSANGATI- CRM. CASE NO. 049- 2019)

KASIRY RAPHAEL=====APPLICANT/ACCUSED

VERSUS

UGANDA=====RESPONDENT/PROSECUTOR

BEFORE HON. JUSTICE TADEO ASIIMWE

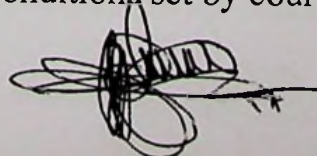
RULLING

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) and 39 of the Constitution, S. 14 (1) & 15 of the Trial on Indictments Act and rule 2 and 4 of the Judicature (Criminal Procedure) (Applications) Rules S.I. 13-8.

The applicant was charged with the offence of Murder contrary to section 188 and 189 of the penal code Act.

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

1. That this court has constitutional powers to release the applicant on bail.
2. It is the constitutional right of the applicant to be released on bail pending the hearing of this trial.
3. That the applicant is presumed innocent until proven guilty by court.
4. That if the applicant is released on bail, he will not interfere with prosecution witnesses and will abide by the terms and conditions set by court.

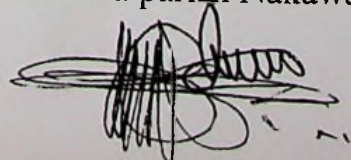


5. That the applicant will not abscond once released on bail
6. That the applicant has a fixed place of a bode within the jurisdiction of this honorable court.
7. That the applicant has sustentative and dependable sureties who are ready and willing to ensure he returns to court to face his trial as and when required.
8. That there are no further charges pending against the applicant.
9. That there is a high likely hood of further delayed trial of the applicant since he was committed in march, 2019.
10. That it is in the interest of justice that this honorable court exercises its discretion to grant bail to the applicant without proving exceptional circumstances.

At hearing, the applicant was represented by counsel Edward Bamulutira while the respondent was represented by Njuki Mariam State attorney form ODPP. Counsel for the applicant made written submission and only 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 23 of the constitution and that court has powers under section 14 of the T.I.A to grant the accused person bail. That the applicant is presumed innocent until proven guilty. He further outlined the what court should consider while granting a n accused person bail.in this case counsel stated that the applicant has a fixed place of a bode at Balitta L.C.1, Nansana Municipality Wakiso District within the jurisdiction of this court and will not abscond.

On sureties, he submitted that the applicant has substantial surities viz- Ssendagire Jacob Seeta Bulwada LC. Wampewo ward Kasangati, Wakiso District a brother to the applicant and Wakida Tom a resident of Zone 7 Kiswa parish Nakawa Division



Kampala, an uncle to the applicant who however did not attend court. That both sureties have undertaken to fulfill their duties.

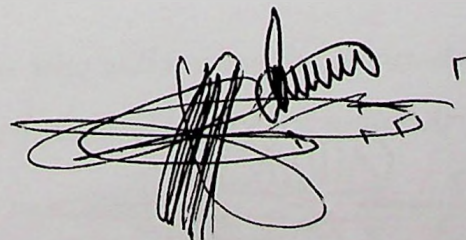
In reply, the learned state attorney objection to this application on grounds that the applicant has brought one surety who is not sufficient in her view. She further argued that the applicant is charged with a serious offence of murder whose maximum sentence is death and as such he is likely to abscond if released. That it took police two months to trace and arrest the applicant as per the summary of the case. She finally prayed that court dismisses this application.

In rejoinder counsel for the applicant submitted that there is no minimum number of sureties require for grant of bail. He invited court to disregard the summary of evidence in this case.

RESSOLUTION.

The position of the law as highlighted by the applicant's counsel is the correct one. This court has discretion to grant or not to grant bail depending on the circumstances of each case. 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.”

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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.

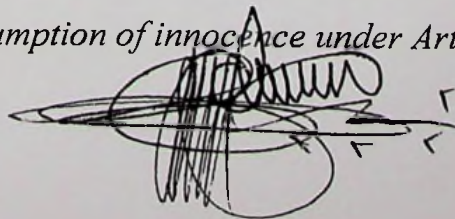
This principle of protection of personal liberty was further cemented in the case of Col (Rtd) Dr. Kizza Besigye v Uganda Criminal Application No.83 of 2016 wherein court stated that court has to consider and balance the rights of the individual, particularly with regard personal liberty...”

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.

In this application, the state Attorney objected to the application on the basis that only one surety was presented to court in a serious matter whose maximum sentence is death. I am not convinced that he will be able to monitor the accused and ensure compliance 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

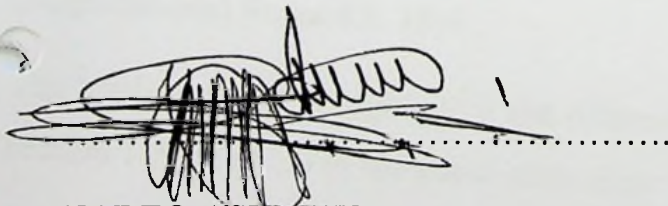
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(3) of the Constitution of the Republic of Uganda, 1995, I find and hold that this is a fit and proper case to grant bail to the Applicant.”

I agree with the holding in the above decision.

In this case, although the applicant has a fixed place of abode within the jurisdiction of this court, the only surety presented to court is substantial, am not convinced that one surety will be able to monitor the accused and ensure that the applicant complies with his bail conditions. Further the applicant was charged with a serious offence of murder whose maximum sentence is death. He is a crime preventer with influence in the community. The circumstances surrounding the commission of the offence were cruel as deceased was beaten leading to his death. I am also alive to the fact that the applicant ought to have protected the alleged criminal owing to his duties. I am weary of the safety of the witnesses. 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.

A handwritten signature in black ink, appearing to read 'Tadeo Ashmwe', is written over a horizontal dotted line. The signature is somewhat stylized and includes a small vertical mark to the right.

TADEO ASHMWE

JUDGE

9/04/2021