

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT LIRA**  
**CRIMINAL MISCELLANEOUS APPLICATION NO.011 OF 2021**  
**(ARISING FROM CRIMINAL CASE NO. AA 15 OF 2021/CRB**  
**NO.240/2021)**

**OCEN DONALD-----APPLICANT**

**VERSUS**

**UGANDA-----RESPONDENT**

**BEFORE HON: JUSTICE ISAAC MUWATA**

**RULING**

This is an application for bail, the applicant was indicted with the offence of murder contrary to section 188 and 189 of the Penal Code Act.

The application was brought under Article 23(6)(a) of the Constitution of the Republic of Uganda, section 14(1) 15(1) of the Trial on Indictments Act Cap 23 for orders that the applicant be released on bail pending the hearing of Criminal Case No. AA 15 of 2021 Lira CRB No.240/2021. It is supported by the affidavit of the Ocen Donald, the applicant.

The main grounds of this application as stated in the notice of motion and supporting affidavit are that; that he is a peaceful and responsible citizen and has a fixed place of abode within the jurisdiction of this court, that he undertakes to report to court whenever he is required to do so and that it's the applicants constitutional right to apply for bail. The applicant also averred

that he has sound and suitable sureties who undertake to ensure that the applicant doesn't abscond from court.

In reply the respondent contended that the offence for which the applicant is charged with is grave, attracting the maximum sentence of death upon conviction hence there is a high possibility that he will abscond if granted bail. The state also opposed the grant of bail on grounds that the applicant was likely to interfere with the prosecution witnesses.

At the hearing the applicant was represented by Okello Ponsiano while the state was represented by Kkaya Jacinta, state attorney. Counsel for the applicant in his submissions elaborated on the grounds stated in the notice of motion and supporting affidavit and presented two sureties. In her response, the state attorney too elaborated on the grounds opposing the application as contained in the affidavit in reply and in the alternative prayed for stringent conditions in the event that the court is inclined to grant bail.

Whereas accused persons have a right to apply for bail by virtue of Article 23(6) (a) of the Constitution of the Republic of Uganda, the court may grant that person bail on such conditions as the court considers reasonable hence the grant of bail is discretionary to the court **See: Uganda vs Kizza Besigye. Constitutional Reference No.20 of 2005.**

Sections 14 and 15 of the Trial on Indictment Act are to the effect that a person indicted can only be released on bail if he or she proves to the satisfaction of the court that special circumstances do exist to warrant his/her

being released on bail. The circumstances which are regarded as special include grave sickness, infancy or old age. Proof of these circumstances though is not mandatory as courts have the discretion to grant bail even where none is proved. **See Bidong Zenone & 2 others versus Uganda (Misc. Application No.0024 of 2015 arising from HCCC No.0028 of 2012 High Court at Arua).**

Article 28(3) (a) of the Constitution of the Republic of Uganda states that every person is presumed innocent until proved guilty or pleads guilty, consequently an accused person should not be kept on remand unnecessarily without trial.

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 and is willing to abide by all other conditions set by court.

In the instant case the applicant presented two sureties Apita Tonny and Okello Bernard who are his biological brothers, having fulfilled all the requirement required for one to stand surety, I find that the sureties produced by the applicant are substantial enough to ensure that he does not abscond. The sureties have also been made aware of the consequences of failure to ensure that the applicant returns to court when required to do so. The accused person also has a fixed place of abode within the jurisdiction of

this court and can easily be traced and lastly the offence of murder though grave is bailable.

In the circumstances, I allow this application on the following terms

- 1) The applicant shall pay shs 2,000,000/= as cash bail (Two million Uganda shillings)**
- 2) Each of the sureties shall also execute a non-cash bond of 10,000,000 /= (Ten million Uganda Shillings)**
- 3) The applicant shall also report to the Deputy Registrar once every first Tuesday of every month until the trial of the case commences.**

I so order.

**JUDGE**  
**28/04/2021**