

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**MISCELLANEOUS CRIMINAL APPLICATION No. 0029 OF 2016**

**ASEA DANTE alias GORO** ..... **APPLICANT**

**VERSUS**

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

**Before: Hon Justice Stephen Mubiru.**

**RULING**

This is an application for reinstatement of bail. The applicant is indicted with one count of Murder c/s 188 and 189 of The Penal Code Act. It is alleged that on 12<sup>th</sup> June 2015 at Lia Trading Centre, Ocopi Parish, Katrini Sub County in Arua District, the accused murdered a one Andiku Seti. He was charged on 19<sup>th</sup> June 2015. On 22<sup>nd</sup> February 2014, he was released on mandatory bail having spent on remand by then, 172 days. He kept on reporting to the court for the mention of his case until 6<sup>th</sup> June 2016 when he was committed for trial by the High Court whereupon his bail was cancelled and court directed that he should be kept on remand, hence this application by which seeks the reinstatement of his bail pending his trial.

His application is by notice of motion under Article 23 (6) (a) and (c), 28 (3) and 44 (c) of the *Constitution of the Republic of Uganda*, and sections 14 and 15 of the *Trial on Indictments Act Cap.23*. It is dated 1<sup>st</sup> November 2016 and it is supported his affidavit sworn on 2<sup>nd</sup> November 2016. He filed an amended Notice of motion and a supplementary affidavit in support thereof on 28<sup>th</sup> November 2016. The main grounds of his application as stated in the amended notice of motion and supporting affidavit are that; before his committal to the High Court, he had been granted mandatory bail and he had accordingly honoured the bail conditions until then. Upon committal, his bail was cancelled and he was remanded.

In an affidavit in reply sworn by a one D/Cpl. Anguzu on 10<sup>th</sup> November 2016, he states that he is investigating officer of the case, and that the state is opposed to the grant of bail to the applicant mainly on grounds that; the accused is facing a charge carrying a maximum penalty of

death and is likely to jump bail, he has not furnished any exceptional circumstances and has already been committed for trial. That he is also likely to interfere with witnesses.

At the hearing of the application, the applicant was represented by Mr. Bundu Richard while the state was represented by Mr. Emmanuel Pirimba, State Attorney. Counsel for the applicant, in his submissions, elaborated further the grounds stated in the motion and supporting affidavit and presented two sureties for the applicant. In his response, the learned State Attorney observed that it was the practice of the Magistrates' courts to cancel bail upon committal and they would need the directions of this court.

After listening to the submissions of both counsel and recording the particulars of the two sureties presented, I re-instated the applicant's bail and undertook to explain the reasons by this ruling and indicate further conditions attendant to that decision.

The Constitutional Court decided in *Hon Sam Kuteesa and two others v. The Attorney General, Constitutional Reference No. 54 of 2011*, that section 168 (4) of *The Magistrate's Courts Act* must be construed as if the Legislature enacted it under the authority of the 1995 Constitution. For that reason, "the automatic cancellation of bail, without any right to be heard, based on the mere fact that one is being committed to the High Court for trial, contained in section 168 (4) of *The Magistrates Courts Act*, is not part of the expressly stipulated circumstances of derogation from the right to protection of liberty in the Constitution." It continued further;

Automatic lapse of bail by the court committing an accused to the High Court for trial has the unconstitutional effect of condemning that person unheard on whether or not he / she should continue to enjoy the right to liberty, restored to him or her when he / she was first granted the bail. It is therefore inconsistent and in contravention of Article 28 (1) of the Constitution. That Article is non derogable under Article 44 (c) of the Constitution. It is a sacrosanct Article.

We have therefore come to the conclusion that section 168 (4) rescinds the constitutionally guaranteed power of the court to grant bail, through the court's exercise of its discretion. It acts counter to the fundamental right of an accused person to apply for and receive the discretionary consideration of the court before which such accused person is brought, to maintain the already granted, or to grant bail. Its purpose and effect, if construed in accordance with the 1995 Constitution, results in its being contrary to Articles 23 (6) (a) and 28 (1) of the Constitution.

We hold that pursuant to Article 274 of the Constitution, section 168 (4) of the Magistrate's Courts Act must be construed in such a way as to provide that:

1. Bail granted, by a court of competent jurisdiction, to a person arrested in connection of a criminal case does not automatically lapse by reason only of the fact of that person being committed to the High Court for trial.
2. Subject to being competently seized of jurisdiction under the law, the court committing an accused person to the High Court for trial, has power derived from Article 23 (6) (a) of the Constitution to maintain bail already granted or to grant bail to an accused person, or to cancel bail for sufficient reason, after hearing the parties concerned on the matter.

This decision is binding on this court and on all magistrates' courts. Bail should be maintained by the court committing an accused person except where that court, for sufficient reason, considers that bail ought to be cancelled. Sufficient cause does not include the mere fact of committal.

I perused the record of committal and found that the Magistrate did not furnish any reason for cancellation for the applicant's bail. It would appear that the Learned Magistrate cancelled bail by virtue of the provisions of section 168 (4) of the Magistrate's Courts Act, simply because of the fact of committal. As indicated in the authority cited above, such a practice was declared unconstitutional and it is for that reason that I decided to re-instate the applicant's bail pending trial.

In the circumstances I found merit in the application and ordered the accused to be released on bail on the following terms; -

1. The applicant is to execute a non-cash bond of Shs. 5,000,000/=.
2. Each of the sureties is to execute a non-cash bond of Shs. 10,000,000/=.
3. The applicant is to report to the Assistant Registrar of this Court on the first Tuesday of every Month until the commencement of his trial or further orders of the court and to the Officer in Charge of Criminal Investigations at Arua Police Station on the last working day of every month until the commencement of his trial or further orders of the court.

It is for those reasons that the application was allowed and an order made for the release of the applicant on bail subject to him meeting the above conditions.

Dated at Arua this 1<sup>st</sup> day of November, 2016.

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Stephen Mubiru  
Judge.