

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
HCT-00-CR-CM NO. 252 OF 2021

[ARISING OUT OF CRIMINAL CASE NO. LUM-0200-202.

No.234470 PRIVATE SERWADDA HENRY=====APPLICANT/ACCUSED

VERSUS

UGANDA=====RESPONDENT/PROSECUTOR

BEFORE HON. JUSTICE TADEO ASIMWE

RULING

This is an application for bail pending trial brought by way of Notice of Motion under Article 23 (6) (a) of the Constitution, section 75 MCA & S. 14 &15(1) of the Trial on Indictments Act.

The applicant is indicted with the offence of murder contrary to section 188 & 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 the applicant is a UPDF soldier at Fort Portal under medical department with service number 234470.
2. That he arrested on the 10th day of January 2021 from fort portal where he works as a UPDF soldier with a medical department and charged with murder contrary to section 188 and 189 of the penal code Act and transferred to Luweero Central police station.

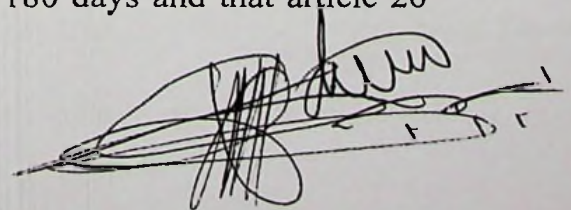


3. That he was committed to the high court, remanded to Nakasongola Government prison and has never been brought for trial.
4. That he suffers from grave illness namely, Chronic Bronchitis with frequent Asthmatic attacks, and hypertensive Heart Disease to justify his release.
5. That the medical report on his health shows that his health conditions are chronic in nature especially Brochial Asthma which can be fatal in prison conditions.
6. That the applicant has substantial sureties ready to stand for him and will abide by the conditions this court may set.
7. That he has a fixed place of aboard at his work place in a military barracks in fort portal where he is attached to the medical department which is within Uganda and within the jurisdiction of this honorable court.

At hearing, the applicant was represented by counsel Charles Opio While the respondent was represented by wanamama Mics-Isaiah a State attorney form ODPP.

Counsel for the applicant filed written submissions and made oral highlights while the respondent made an oral reply.

In his submissions, counsel for the applicant relied on article 23(6) of the constitution on and argued that the applicant has a right to apply for bail and that this court has discretion under section 14 &15 of the T.I.A to grant the accused person bail. That the applicant is suffers from grave illness which is fatal under prison condition. He relied on a medical report dated 2nd August marked annexure A. He further submitted that the applicant has been on remand for more than 180 days and that article 26 should come in handy.

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In addition, he argued that the applicant has a fixed place of abode in fortportal barracks and that his ancestral hom is at Giryada Village, Kibayi Parish, Bamunanika county in Luweero district.

On sureties, counsel submitted that the applicant has sound sureties with proper identification and are willing to undertake the role of sureties.

In reply, the learned state attorney objected to the application and raised only points of law since he did not file a reply this application. He submitted that t the that the prisons have not confirmed to court that they have failed to treat the applicant and that there is nothing in the report to show that the applicant cannot be treated in the prison as there is no recommendation for further treatment in the report. That murder is a capital offence hence the likelihood of escaping high. He further objected to the sureties and submitted that the sureties are not substantial since they are of the same rank. She therefore invited court to fix the case for hearing since the applicant is already committed to the high court pending trial.

RESSOLUTION.

Bail is a constitutional right premised on 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.”

The rationale behind the grant of bail is in respect to upholding one's right to personal liberty.

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.

Although this court is aware that proof of exceptional circumstances is not a mandatory requirement, the applicant in this application based his application on grave illness as contained in Annexure A, a medical report.

For one to rely on grave illness as an exceptional circumstance, the law is that it is not enough to prove existence of grave illness but rather in addition that the applicant must prove that the prisons are incapable of treating such illness.

In this case a close look at annexure A, a medical Report relied upon by the applicant, shows that the illness of the applicant is fatal under prison conditions but is being treated with inhalers. In essence the illness of the applicant is capable and is being treated/ managed by the prisons. Most diseases are worsened by prison conditions but as long as the prison authorities can manage such diseases and have not declared that they cannot treat them, it can never be a sufficient ground for grant of bail.

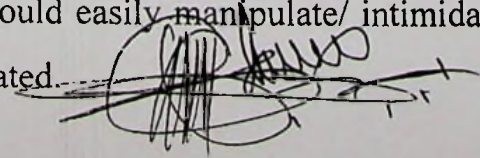
I am therefore satisfied that exceptional circumstances have not been proved. However, I shall proceed to consider other circumstances of this application since proof of exceptional circumstances is not mandatory.

In this application the applicants counsel objected sureties submitting that they were of lower ranks and therefore not substantial. Although the law does not require that officers of higher ranks stand sureties of UPDF officers, that substantiality of any surety can best be ascertained by the influence the surety has over the applicant. A UPDF officer is not an ordinary citizen and by his position is intimidating to ordinary citizens and fellow ranked officers. I therefore agree with the respondent's counsel that it is practicably required that in applications involving military officers, officers in superior positions stand surety for them.

In this case the first surety is of the same rank with the applicant and the other two are civilians. I am not convinced that they would ensure non- abscondment of bail terms by the applicant. I find all sureties not substantial for the above reasons.

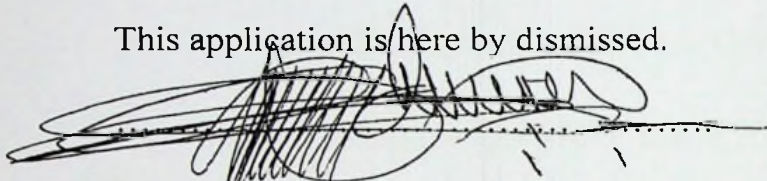
further, the applicant and the witnesses come from the same village and have had a long standing wrangle involving another alleged murder. Although some of these matters are subject to the trial, this court cannot risk the danger it pauses to the witnesses. I am usually hesitant to grant bail in such circumstances involving relatives or village mates. Although the applicant is presumed innocent until proven guilty it is very likely that he will interfere with the key witness once released. I must note that the applicant's right to liberty does not lie in a vacuum. It must be weighed with the danger it poses to the Public and the interest in the administration of justice.

Further, murder is a serious offence, which attracts a maximum sentence of death. The applicant was neighbor of the victim and could easily manipulate/ intimidate vital witnesses including the victim as already stated.



In conclusion therefore, I find that although the applicant has a right to apply for bail and this court has discretion to grant the same, for the earlier reasons given in this ruling, I shall exercise my discretion not to grant bail to the accused. Instead the case should be fixed for hearing since he is already committed.

This application is hereby dismissed.

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TADEO ASIIMWE

JUDGE

03/05/2022