

Respondent's Reply

The respondent, in their affidavit in reply, opposed the application and stated that the applicant stands charged before the General Court Martial. Due to the severity of the offence he is charged with, he is likely to abscond if he is granted bail. The applicant must adduce cogent evidence to satisfy the court that he will not abscond once released on bail. However, upon perusing his application, it appears that he does not adduce cogent evidence. Further that it will be difficult to trace the applicant when he absconds from bail. That it is just, equitable, and in the interest of justice that the application be denied and the trial process be expedited to its logical conclusion. They also stated that there are no exceptional circumstances demonstrated by the Applicant to warrant his release on bail.

They stated that, in the alternative, if the applicant should benefit from bail, then stringent preconditions should be imposed to compel his return to answer the charges preferred against him.

Representation

The applicant was represented by M/S Akampurira & Partners, while the respondent was represented by Senior State Attorney Tabaro Carolyne Ahereza.

Applicant's submissions

The applicants submitted, briefly, that Article 139(1) of the Constitution establishes the High Court and vests it with unlimited jurisdiction in all civil and criminal matters. The High Court is empowered under Section 17(2) of the Judicature Act to grant bail.

The applicants cited the case of **Attorney General v Kabaziguruka (Constitutional Appeal 2 of 2021)** to submit that military courts have no jurisdiction to try civilians and ordered such cases to be transferred to civilian courts and that to date, the Applicant's case has not been transferred and his detention by a court which lacks jurisdiction is illegal, unconstitutional, and offends all tenets of criminal justice system.

The applicant further submitted that they have been detained for over 749 days without trial or being committed for trial in a court of competent jurisdiction, and this violates his constitutional right to a free, fair, and expeditious trial under the criminal justice system. counsel further argued that being detained for more than 180 days without being committed for trial warrants his release on mandatory bail under S.15(2) of the Trial on Indictment Act. He referred to the case of **Tumwesigye Enock vs Uganda- Criminal Misc Application No.0133/2025**.

He further submitted that they have furnished the court with documents to prove that he has a fixed place of abode, documents to identify his sureties, and prayed that the court finds them substantial. He further submitted that he is a married man with a family to support, and he is

unlikely to abscond from bail. Further, having been in detention for 749 days it minimizes his risk of interfering with investigations since they should have been completed within that period.

Respondent's submissions

5 The respondent, briefly, cited **Sections 14 and 15 of the Trial on Indictments Act Cap 23** to establish the role of this court in bail applications and the requirements thereunder. She further cited the cases of ***Adriko Yudas vs Uganda, Miscellaneous Criminal Application No. 030 of 2016, FHRI vs Attorney General Constitutional Petition No.20 of 2006, and Aganyira Albert vs Uganda Criminal Miscellaneous Application No.0071 of 2013.***

10 She submitted that the onus of establishing the requirements stipulated in the above authorities squarely lies on the applicant and that obligation is discharged by presenting credible evidence of high value, and in the instant case the applicant seeks to rely on the fact that he has a fixed place of abode within the jurisdiction of this court and availability of substantial sureties to guarantee his appearance.

15 She further submitted relying on the case of ***Aganyira Albert vs Uganda(supra)*** that to prove that the applicant's sureties are substantial, the Applicant ought to have produced documentary evidence to prove the capacity of his sureties, to meet the monetary obligations, and proof that the sureties' particulars can easily be verified to the satisfaction of the court. The applicant, however, did not accord the respondent's agents the opportunity to verify the particulars of his
20 sureties.

The respondent further cited the cases of ***Wajabu Jackson vs Uganda, Criminal Misc Application No.56 of 2022*** and ***Yusuf Siraj vs Uganda, Crim Misc Application No. 0134 of 2021*** to submit that the accused is charged of a serious offence and he has been committed to the High Court for trial but has not demonstrated any exceptional circumstances to warrant his
25 release on bail. It is thus logical that the application be dismissed, and the accused's case be expeditiously fixed for trial.

The respondent further submitted, relying on the case of ***Adriko Yudas vs Uganda Misc Criminal Application No. 030 of 2016***, that bail is granted after satisfying that it is deserved, on account of the presumption of innocence and the need for the accused to prepare for trial without
30 frustrating it. The paramount consideration for grant or refusal is the promotion of the administration of criminal justice by promoting fairness in the process to the accused, victims, and society at large. That court is enjoined to balance the constitutional rights of the applicant with the needs of society to be protected from lawlessness.

She submitted that the applicant has not demonstrated satisfactorily that he is deserving of
35 release on bail under the principles of law.



Court's decision

In my view, there are two aspects for this court to interrogate: Whether it is proper for this court to entertain this mandatory bail application in the circumstances that appear to be peculiar, and if so, the merits of the application.

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I address the 1st aspect as follows:

The applicant states in **paragraph 2 and 3** of his affidavits in support to the application, that on 3rd July 2023, he was charged with the offence of Murder contrary to Section 188 and 189 of the Penal Code Act in the **UPDF General Court Martial at Makindye vide UPDF/GEM/022/2023** and was remanded to Luzira Maximum Security Prison. That he appeared before the court martial on several occasions from July 2023 to 15 January 2025 without being committed for trial. This was not contested by the respondent.

10 It is well known that the Supreme Court, in the groundbreaking decision of **Attorney General v Michael Kabaziguruka (Constitutional Appeal No.2 of 2021)**, held that military courts lack jurisdiction to try civilians and ordered the transfer of civil cases in military courts to civilian courts. The decree of the Supreme Court, following its decision, ordered inter alia that.

“(2) All charges, or ongoing criminal trial, or pending trials, before the court martial involving civilians must immediately cease and be transferred to the ordinary courts of law with competent jurisdiction.”

20 Concerning the above order, it was expected that the Office of the Director of Public Prosecutions would expeditiously transfer all the files involving civilians to the respective courts of law with competent jurisdiction. It is also expected that these files are to be dealt with according to the stage they were at, in tandem with the procedural laws that respectively accrue thereto.

25 However, the applicant states in **paragraph 6** of his affidavit in support that although the Supreme Court ordered the transfer of his case to civilian courts, no action has been taken to implement the decision of the court. It is not disputed by the respondent that the applicant's file is yet to be transferred to the civilian court.

Although the applicant's file from the Court Martial is yet to be transferred to civilian courts, 30 **Article 139 (1)** of the 1995 Uganda Constitution grants the High Court unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law. This implies that this application can nonetheless be entertained by this court.

Courts of law are further enjoined by **Article 126(2)(e) of the 1995 Uganda Constitution**, which provides that in adjudicating cases of both a civil and criminal nature, they shall subject to the law administer substantive justice without undue regard to technicalities. In the same wake, 35

Section 17 (2) of the Judicature Act Cap 16 stipulates that concerning its own procedures and the procedures of the magistrates courts, the High Court shall exercise its inherent powers to prevent abuse of court process, limit delayed prosecutions, ensure expeditious trial and also ensure that substantive justice shall be administered without undue regard to technicalities.

5 In respect to the above, I find that in the current circumstances, the applicant has established that he lies in a state of uncertainty as to the position and future of his case, and as such is purged by the calamities that the above-cited laws seek to curtail. This court has, in the judgment of **Hon. Justice Michael Elubu**, in **Kiiza Eron vs Uganda MISCELLANEOUS APPLICATION No. 118 of 2025**, addressed the issue of uncertainties and emphasized that

10 **“There should be no uncertainty in the manner of the law. Rather, it should be predictable and inspire confidence. Uncertainty is an injustice that may result in oppression. The courts should remedy such a situation by providing certainty of trial.”** In that regard, this court cannot further contribute to the looming uncertainties in the applicant's case by declining to address his application.

15 In the same spirit, the case of **Tumwesige Enock vs Uganda Miscellaneous Application No. 133 of 2025** cites the case of **Shabahuria Matia vs Uganda, Criminal Revision Case No.05 of 1999**, all as follows:

20 **“In Shabahuria Matia vs Uganda Criminal Revision Case No.05 of 1999, the High Court exercised its inherent jurisdiction to release an accused person detained for over four years without trial. The Court emphasized that the High Court must protect its ability to function as a forum of justice and not an agent of oppression, particularly in cases where prolonged detention without trial constitutes an abuse of court process.”**

In that respect, it would be oppressive for this court as a court of original jurisdiction to decline to hear the applicant. It would generally be a clog in its wheel as a forum for substantive justice.

25 I am therefore satisfied that this application for mandatory bail can be rightfully entertained by this court, whilst the applicant's file awaits transfer to civilian courts.

Notwithstanding the above, the position of this court in respect to such applications has earlier been espoused by **Hon Justice Isaac Muwata** in the case of **Tumwesigye Enock vs Uganda Criminal Miscellaneous Application No. 133 of 2025**, where he holds that:

30 **“Where a civilian was initially charged in the former court martial, any subsequent bail application falls under the jurisdiction of the ordinary courts, and an accused is at liberty to exercise that right to apply for bail. For offences typically tried by the High Court, such as murder (a capital offense), the bail application is properly made before the High Court and is considered based on the standard legal principles governing bail in this court, irrespective of the prior, unconstitutional proceedings in the military court.”**

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I associate myself with this position

Having established that this application is proper before this court, I shall address the merits of the applicant's prayer for mandatory bail.

5 ***The mandatory bail application***

This court is cognizant of **Article 28(3)(a) of the 1995 Constitution of Uganda** as amended, which provides that every person charged with a criminal offence shall be presumed innocent until proved guilty or until that person has pleaded guilty.

Further, the **1995 Constitution of the Republic of Uganda under Article 23 (6) (a)** grants a person who is arrested in respect of a criminal offence the right to apply for bail, and the court may grant such a person bail at its discretion as it may consider reasonable. Be that as it may, **Article 23(6)(c) of the 1995 Uganda Constitution** provides for mandatory bail considering offences triable only by the High Court. It provides as follows.

15 ***In the case of an offence triable only by the High Court, if that person has been remanded in custody for one hundred and eighty days before the case is committed to the High Court, that person shall be released on bail on such conditions as the court considers reasonable.***

Rule 10 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) directions, 2022, expounds on mandatory bail for persons charged with offences triable only by the High Court and provides as follows:

25 ***"Where an offence is triable only by the High Court, if a person has been remanded in custody in respect of that offence for one hundred and eighty days before the case is committed to the High Court, that person shall be released on bail on such conditions as the court considers reasonable."***

In the instant application, the applicant is charged with Murder contrary to **Sections 171 and 172 of the Revised Penal Code Act, Cap 128**, an offence triable only by the High Court. Further, the applicant has been remanded since July 2023 and has to date never been committed for trial; not by the Court Martial while it was operational, and not by a civilian court following the Supreme Court orders to transfer civilian cases from the court martial to civilian courts.

In such circumstances, the provisions of the law enjoin this court to release the applicant on bail on such conditions as the court considers reasonable.

I note that the respondents averred that the applicant does not satisfy the conditions required for bail, citing their failure to verify the applicant's documentation and that of their sureties, as well as the likelihood of the applicant absconding. However, the respondents did not adduce any evidence to support their assertions, as is required. See ***Uganda vs Dr. Kiiza Besigye & Others***,

Constitutional Reference No. 020 of 2025. Considering the latter, I find that the respondents have not given this court a sound reason for it to depart from what is constitutionally required of it in the circumstances.

In the result, I find that the applicant satisfies the requisites for mandatory bail under Article 23(6) (c) of the Constitution, having been remanded for over 180 days without committal. Such bail shall therefore be granted on the court's terms and the terms provided under **Section 15 of the Trial on Indictment Act, Cap 25**, which provides that.

“(1) The High Court may at any stage in the proceedings release the accused person on bail, that is to say, on taking from him or her a recognizance consisting of a bond, with or without sureties, for such an amount as is reasonable in the circumstances of the case, to appear before the court on such a date and at such a time as is named in the bond.”

The applicant is therefore granted bail specifically on the following terms:

1. The applicant shall deposit a cash bail of Ushs. 20,000,000/ (Uganda Shillings twenty million only).
2. Each surety presented in court shall execute a bond of Ushs. 50,000,000/ (Uganda shillings fifty million only) (Not cash).
3. The applicant shall deposit his passport in court to the Deputy Registrar. He is restricted from traveling abroad without clearance of court.
4. The applicant is directed to report to the Deputy Registrar every 1st Monday of the month, effective September 2025.

I so order and rule.

Delivered at Kampala this 9th day of August 2025

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Isah Serunkuma

JUDGE

