

an order admitting the Applicant to bail pending the hearing and determination of the case against him.

30 **Consideration of the Bail Application**

Ms. Ainebyona, for the Respondent, did not dispute that the Applicant has been on remand for more than 180 days without committal, but opposed the application on three grounds: first, that the offence of Rape is grave and carries a maximum sentence of death, such that the Applicant, if released, is unlikely to return for trial; second, that the safety of the complainant and other
35 prosecution witnesses may be compromised should the Applicant regain his liberty; and third, that the sureties earlier presented on the Applicant's behalf had not produced valid means of identification, casting doubt on their suitability to guarantee his attendance.

These objections, while properly raised, go to considerations that bear on the exercise of discretionary bail under Article 23(6)(a) and the Bail Guidelines — namely, the probability of
40 absconding and the protection of witnesses — and not to the existence of the Applicant's entitlement under Article 23(6)(c). Once the constitutional threshold of 180 days' remand without committal is established, as it is here, the gravity of the charge and the severity of the prescribed sentence, however serious, cannot by themselves defeat that entitlement; to hold otherwise would render Article 23(6)(c) nugatory in precisely the category of cases — capital and other grave
45 offences triable only by the High Court — that it was designed to address. The Respondent's concerns as to witness safety and flight risk are, however, properly and adequately met not by refusal of bail but by the conditions attached to it, including the requirement of substantial sureties, regular reporting, and a prohibition on contact with witnesses, set out below. The objection as to the suitability of the sureties earlier presented is well founded on the record and is addressed
50 directly in the conditions that follow, which reject those sureties and require fresh ones bearing valid identification.

It is undisputed that the Applicant has remained on remand for a continuous period exceeding one hundred and eighty (180) days in respect of an offence triable only by the High Court, without his trial having commenced or the case having been committed for trial. That threshold lapsed on 4
55 November 2024, and the Applicant has, on the record before this Court, remained in custody well beyond that date.

The Applicant's bail application is grounded in Article 23(6)(c) of the Constitution, which provides that where a person is arrested in respect of an offence triable only by the High Court and has been remanded in custody for one hundred and eighty days before the case is committed for trial, that person is entitled to be released on bail on such conditions as the court considers reasonable. This provision must be read together with Article 23(6)(a), which preserves the court's ordinary discretionary bail jurisdiction, and Article 28(3)(a), which entrenches the presumption of innocence until proof of guilt or a plea of guilty. The two limbs of Article 23(6) are not of the same character: discretionary bail under paragraph (a) may be declined by the court for good cause, but mandatory bail under paragraph (c) admits of no such latitude once the constitutional threshold is crossed.

Mandatory bail is a constitutional right, not a privilege at the State's pleasure. Once the statutory remand threshold is met, an accused person must be released, regardless of the gravity or notoriety of the charge. This principle was applied by Akiiki-Kiiza J in *Florence Byabazaire v Uganda*, Miscellaneous Application No. 284 of 2006, where the Court observed that Section 15 of the Trial on Indictments Act, Cap. 25, operationalises Article 23(6)(c) by providing the procedural mechanism by which an accused may invoke the constitutional time limit before committal.

Section 15(1) of the Trial on Indictments Act, Cap. 25, authorises the High Court to grant bail to a person who is either committed for trial or remanded in custody pending trial. Section 16 provides that the remand period begins on the date the accused was first taken into custody in respect of the charge, irrespective of any subsequent committal procedures. The importance of the 180-day limit has been reaffirmed in recent decisions, including *Odongo Benedict Isiah v Uganda*, Miscellaneous Application No. 78 of 2023 (Lubega J), which held that an accused remanded for more than 180 days before being committed to the High Court must be released on bail. Similarly, in *Mugarura Roland v Uganda*, Criminal Miscellaneous Application No. 028 of 2025 [2025] UGHC 1092, the court applied Guideline 10(1) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice Directions), 2022, reinforcing the constitutional requirement that an accused facing a charge triable only by the High Court, who has been remanded for over 180 days before committal, is entitled to bail.

The same point was emphasised in *Mivumbi Richard v Uganda*, Criminal Miscellaneous Application No. 29 of 2025 [2025] UGHC 778, where this Court cautioned that while an accused

person has a constitutional right to apply for bail, whether discretionary or mandatory, courts must carefully evaluate the applicable legal framework and must not abrogate to litigants their responsibility to safeguard that right. That caution is met on the present facts: the record
90 independently establishes the date of arrest, the absence of committal, and the lapse of 180 days, leaving no discretionary evaluation outstanding once the constitutional threshold is confirmed. As to the proper approach to constitutional rights generally, the Constitutional Court's guidance in *Okello John Livingstone and 6 Others v Attorney General*, Constitutional Petition No. 1 of 2005, that provisions guaranteeing fundamental rights must be construed liberally and purposively to
95 extend their benefit fully, applies with equal force to the right to mandatory bail under Article 23(6)(c).

It bears emphasis that, once an applicant has established entitlement to bail under Article 23(6)(c), the inquiry is at an end; the applicant need not, in addition, demonstrate exceptional circumstances such as grave illness, infancy, or the like. The requirement to show exceptional circumstances is a
100 creature of discretionary bail under Article 23(6)(a) and the Bail Guidelines, where the court weighs factors going to the probability of the applicant returning for trial. Mandatory bail operates on an altogether different footing: it is triggered by the objective fact of prolonged remand beyond the constitutional limit, and confers an entitlement that is not subject to qualification by considerations proper to the exercise of discretion. To import an exceptional-circumstances
105 requirement into Article 23(6)(c) would be to collapse the distinction the Constitution itself draws between the two limbs of Article 23(6), and would defeat the very purpose of the mandatory limb, which is to impose a hard constitutional check on prolonged pre-trial detention irrespective of the nature of the allegation.

Applying these authorities to the facts before me, the Applicant is charged with an offence triable
110 only by the High Court and, on the record, has been continuously held on remand for more than 180 days without committal for trial. The constitutional and statutory threshold under Article 23(6)(c) of the Constitution and Sections 15 and 16 of the Trial on Indictments Act has therefore been met, and the Applicant is entitled, as of right, to be released on bail. What remains to be determined is not whether bail should be granted, but what reasonable conditions, in the
115 circumstances, should secure his release.

Bail Conditions

Having considered the application and the legal framework for bail, I am satisfied that bail ought to be granted, subject to the following conditions:

- 120 1. The Applicant shall execute a non-cash self-bond in the sum of Uganda Shillings Ten Million (UGX 10,000,000/=).
2. The Applicant shall produce two (2) substantial sureties, each of whom shall execute a bond in the sum of Uganda Shillings Five Million (UGX 5,000,000/=), to be approved by the Registrar as to substance and fixed place of abode within the jurisdiction of this Court. The sureties previously presented — Nakitto Juliet, Ecatu Robert, Okumu Patrick, and
125 Kiwalabye Ibrahim — who have not produced valid national identity cards, are rejected. The Applicant shall present fresh sureties, each bearing a valid national identity card, for approval by the Deputy Registrar of the Criminal Division before release.
3. The Applicant shall report to the Criminal Registry of this Court once every month, on a date to be fixed by the Registrar, until the conclusion of the trial.
- 130 4. The Applicant shall not interfere, directly or indirectly, with any witness or evidence connected with the case against him.
5. The Applicant shall not travel beyond the jurisdiction of this Court without its leave.

Non-compliance with any of these conditions, or the emergence of any ground recognised in law for the revocation of bail, shall entitle the Respondent to apply for cancellation of the Applicant's
135 bail and the issuance of a warrant for his arrest.

Decision

The Applicant is granted bail on the conditions set out in this ruling.


Gadenya Paul Wolimbwa

JUDGE

140 **30th June 2026**