

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CRIMINAL DIVISION**  
**MISCELLANEOUS APPLICATION NO. 158 OF 2019**

5      **KAYONGO BASHIR ----- APPLICANT**

**VERSUS**

**UGANDA ----- RESPONDENT**

**BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN**

**RULING**

10      By this Application made under the provisions of the Law cited in the Notice of Motion. The Applicant sought orders of this court, releasing him on bail pending his trial, and that consequential directions to be issued to regulate Bail.

15      The grounds for the application are also set out in the Notice of Motion and I do not find it necessary to reproduce them here. Suffice it to say that, the Applicant is charged with aggravated defilement contrary to Section 129 (4) (c) of the Penal Code Act.

20      While he was committed for trial on the 12<sup>th</sup> day of April, 2019, and has been on remand since 28.09.18, the date for trial has not been set.

25      The application for bail is supported by an affidavit of the Applicant dated 12.08.2019. There is an affidavit in reply of the Respondent.

30      When the application was called for hearing on 29.07.2020, Counsel for the Applicant went through the Notice of Motion and supporting affidavit and submitted that Applicant seeks to be released on bail pending trial.

He asserted that this Court has jurisdiction to grant bail, pointing out that the Applicant has a fixed place of abode at Mabanda Cell, Matugga, Gombe Division, Nansana Municipality, Wakiso District.

5 Also that, the Applicant has substantial sureties before Court and if released will not interfere with the investigations as they are complete, and he will not abscond.

10 Counsel the presented the National Identify card of the Applicant and a letter from the LC1 Secretary as proof of residence. – See copies on record.

The Sureties three in number were also presented and copies of their National Identity cards and letters from the LCs put on record.

15 The first surety is a sister to the Applicant. The second surety is the wife. While the third surety is a family friend.

20 The wife of the Applicant did not present her National Identity card as it is said to have been lost. She instead presented a letter from Matugga Police Station where she reported the loss and that she is in the process of acquiring a new identity card.

It was then prayed that the application be allowed.

25 Referring to the affidavit in reply, Counsel for the Respondent opposed the application.

30 She contended that the Applicant had not proved that he has a permanent place of abode as he had not presented any proof of ownership of a place of residence or any payment of Utility bills.

That therefore, he would be hard to trace.

35 Secondly that, the offence with which he is charged is a serious one that carries a maximum sentence of death and he has been committed for trial and he is therefore likely to abscond.

Further that, since he is a person of authority in the school where the victim was a student, he is likely to interfere with witnesses.

5 Also that, no exceptional circumstances had been proved to warrant release on bail and that he does not qualify. For example, that, he is not of advanced age and there is no report indicating that he is a first offender.

10 And that the sureties presented are not substantial. The first one though a sister lives in Nakaseke while Applicant stays in Matugga. Therefore, that, the surety will not be able to monitor the Applicant to ensure that he answers the bail.

15 That the second surety although wife of the Applicant will not be able to compel him to appear for trial. And that it is not clear if she has any work and therefore may find it hard to comply with the terms.

While the third surety has not availed information as to what she does.

20 And that all the LC introduction letters provided bear the date of 30.07.2020 and 31.07.2019.

Therefore that, the documents are questionable and Court should not rely on them.

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It was then prayed that application be dismissed.

30 In rejoinder, it was the submission of Counsel for the Applicant that the National Identity cards tendered together with the LC letters of introduction are proof that the Applicant is a Ugandan and resident of the area confirmed by the LCs.

That the role of sureties has been under estimated and the Applicant cannot abscond.

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While the charge is a capital one, it is within the jurisdiction of court to grant bail.

Counsel reiterated that, interference with investigations is not possible as the investigations are complete.

5 Relying on the case of **Foundation for Human Rights Initiative vs. Attorney General, Constitutional Petition 20/2006**, Counsel asserted that exceptional circumstances are no longer a requirement for release on bail; as the court found S.15 (1) (a) of the Trial on Indictment Act to be in contravention of the Constitution.

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That while the offence is serious, the Applicant has no previous record and is presumed innocent until proven guilty. He relied on the case of **Panjur vs. Rep. [1973] EA 282** cited with approval in the case of **Kanyamunyu Mathew Muyogoma vs. Uganda Cr. App. No. 0177/2017** where it was held that *"if courts are simply to act on allegations, fears or suspicions, then the sky is the limit and one can envisage no occasion when bail would be granted whenever such allegations are made"*.

15

20 Counsel then prayed court to overrule the objections of the Respondent and grant the Applicant bail.

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After careful consideration of the submissions of both Counsel and after going through the authorities cited in support of the application, I find that I am more persuaded by the submissions of Counsel for the Applicant.

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It is trite law that *"a person whose liberty has been deprived by imprisonment before trial or when not serving a sentence is free to apply for bail"*. However, the discretions to grant or not grant bail lies with court, which has to take all interests of justice of the parties and the society as a whole into account.

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In the present care, the investigations are complete and the Applicant was committed for trial. The possibility of Applicant's interference with investigations is not likely.

He has presented sureties who have been well identified before court. They are close family members that is, Sister, Wife and Family friend, who have undertaken to ensure that Applicant attends court when required to do so.

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Counsel for the Respondent's argument that they are women and cannot therefore prevail upon the Applicant to appear is hereby rejected. It is based on mere speculation. The sureties are substantial and if they fail in their duty, there will be consequences.

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While the offence of aggravated defilement is a serious one that carries a maximum sentence of death, it still remains the law that an accused is presumed innocent until proven guilty. It is therefore not right to act on fears and allegations of the possibility of abscondment if one is granted bail.

15

It has been established by case law that ***"if courts are simply to act on allegations, fears or suspicions, then bail would never be granted whenever such allegations are made"***. – Refer to **Panjur vs. Rep. (Supra)**.

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The contention that Applicant has no fixed place of abode is belied by the letter of introduction from the LCs and his National Identity card, together with that of his wife, the second surety.

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The village, Parish and District are well known. The Applicant has satisfied the onus placed on him to prove he has a permanent place of abode. – See **Mugenyi Steven vs. Uganda Miscellaneous Application. 65/2005**, Justice Remmy Kasule.

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With that address which is not disputed, his whereabouts can be traced.

While the Applicant has not deposited any title to show he owns property/home or produced any Utility bills, that alone would not be ground for denying him bail. – See the case of **Kanyamunya Matthew Muyogoma vs. Uganda (Supra)**.

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What is important is that he remains within the jurisdiction of this court and that the sureties ensure that he appears in court or complies with the bail conditions set by court.

- 5 The Applicant was committed for trial but it is not certain when he will be tried, contrary to the requirement for speedy trial.

As submitted by Counsel for the Applicant and rightly so, the requirement for exceptional circumstances to be proved before a person is granted bail pending trial have long been set aside by the Court of Appeal. – See the case of **Foundation for Human Rights Initiatives VS. Attorney General (Supra)**.

15 For all those reasons, I allow the application. The Applicant is granted bail on the following terms.

1) Cash bond of Shs. 500,000/-

2) Each of the Sureties is bound in the sum of Shs. 2,000,000/- not cash.

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3) The Applicant to report to the Registrar of the Court once a month on the first Monday of each month with effect from 03.08.2020 until otherwise directed by court.

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**FLAVIA SENOGA ANGLIN**  
**JUDGE**  
**30.07.2020**