

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA**

**CRIMINAL MISCELLANEOUS APPLICATION NO.16 OF 2019  
(ARISING FROM IGANGA CRIMINAL CASE 134 OF 2018)**

**MAGANDA CHARLES DHABASADHA::::::::::::: APPLICANT**

**VERSUS**

**UGANDA ::::::::::::::: RESPONDENT**

**RULING**

**BEFORE: HON. LADY JUSTICE EVA K. LUSWATA**

I have carefully considered this application, which is an application for bail pending trial.

Under Article 23(6) (a) and 28(3) of the Constitution, the applicant has a right to apply for bail, giving reasons why he should be released to attend his trial outside prison.

According to Sections 14 and 15 of the TIA, the law requires that he presents exceptional circumstances for his release, for example grave illness or advanced age etc. Even then, it remains his constitutional right to apply for bail. And as pointed out by State, it is still my discretion to release him.

This applicant has presented strong reason for his release on bail. It is shown that he is HIV positive on medication and also a patient of TB and Hepatitis B, which according to the medical superintendent of Iganga Hospital are highly contagious

and require strict monitoring. Also the officer in charge Iganga prison, has supported that diagnosis, and in addition indicated that it is a serious case because of the fear of contamination or infecting other inmates.

This application was supported by an affidavit. It was raised by the State, and I confirmed, that the affidavit was not commissioned yet it appeared to be made by an illiterate who appended their thumb print. No certificate of translation was attached to his affidavit. Indeed upon questioning, the applicant conceded that he cannot read, or write and he does not understand the contents of the motion or the affidavit in support. The legal decision to be done then would have been, for me to dismiss this application. However, I perused it and I appreciated the gravity of its contents. So instead of discarding the application all together, I put the applicant on oath, and he undertook to speak the truth. So I believe what he has said on oath is the truth.

Much of the applicant's testimony in court contrasts with what he had stated in the affidavit, which would mean this Court, was being led to release a person charged with a very serious offence, on a substantially false affidavit, and for that, I take great exception. I would blame both the applicant and the advocate, but more so, the applicant, because I wish to believe that an advocate would record what has been stated by the client.

However, since the applicant is professed to be illiterate and has stated he cannot read or understand what is contained in his affidavit, the Court cannot for certain conclude that he can stand by the contents of his affidavit.

Going by his testimony in court, it appears that the applicant is no longer resident in Lugolole, Baitambogwe Sub-County in Mayuge. Although he has confirmed it

his mother lives there, that is the family home and he is on working duty in Iganga. This is information that should have appeared in the affidavit. He has stated that he lives with one Isabirye Samson at Bugumba, for reasons of work. He has stated that he is a casual labourer, yet I noticed that in the affidavit he called himself a small scale business man dealing in house hold items. Also it appears that the facts of his arrest defer greatly to what he allegedly stated in his affidavit. In the affidavit he had stated that he was arrested at Nawampendo Trading Center, but he has confirmed that he was actually arrested from Kabayingiire at his sister's place.

The importance of these facts, are interpreted in line with the cardinal rule that release on bail, can only happen where the court is convinced that the applicant is not a flight risk. So, when I see untruths especially, to do with residence and the issues of arrest, then I must make my decision with much caution.

This applicant needs to show more that he will return and answer bail. I would have liked to see a surety from Iganga, his stated place of work, and somebody who actually lives with him in his parent's home. I would also like to see, a letter of the LC of Lugolole where his parents reside, and another letter from the LC where he works. At the same time, I have voiced my concern that keeping this man in prison pending his trial, with the strong evidence of his illness, will be inhuman and at the same time a danger to the other inmates.

I am therefore allowing the application but with conditions;

- a) Before his release, the applicant must produce an extra surety from his place of work in Iganga, who can confirm that even as he works, he can be followed up to attend his trial.

- b) Secondly, another surety who resides with him when he returns home in Lugolole 'A'.
- c) I will also require two letters of LCs, one from his place of work, and one from his home in Lugolole.
- d) He shall be released after paying a cash bail of Shs. **3,000,000/=** (three million shillings only).
- e) The sureties are bonded in Shs. **5,000,000/=** (five million shillings only) **each**, not cash.
- f) Those requirements must be place on the court file and brought to my attention before the applicant's release within 14 days from today. Upon my directions, a production warrant shall issue.

I so order

Signed

**EVA K. LUSWATA**

**JUDGE**

**12/7/2019**