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

CRIMINAL MISC. APPLICATION NO. 012 OF 2018

VERSUS

RULING

BEFORE: HON. LADY JUSTICE EVA K. LUSWATA

This is an application for bail pending the trial of the applicant who is charged with the offence of murder. Counsel for the applicant has applied for bail without stringent terms, his argument being that the applicant fulfils the conditions laid down by statute and by numerous authorities.

That he has been on remand since 1st February 2015, and he has satisfied Court that he will not abscond by presenting substantial sureties and stating his address of abode.

He has also stated that the presumption of innocence is a very important principle that should not be ignored, and that his client will respect all bail term set.

Counsel for the state did not seriously oppose the application. However, he pointed out that bail remains the discretion of Court and the Court in exercising her discretion, should note that this is a serious offence with a maximum sentence of death on conviction.

He continued that the applicant who is ready committed for trial should be more interested in prosecuting his appeal and there is a possibility that it might come up in the next session. He did not object to the sureties.

My decision

It has been set out in many cases that, the right to apply for bail is a constitutional right and is open to all categories accused person irrespective of the nature of the offence for which they are charged. Consider for example the case of **His Majesty** Omusinga Mumbere Wesley Vrs. Uganda [Crim. Misc Application No. 75/2016] and Okello Augustine Vrs. Uganda [Cr. Misc. Application No. 06/2012].

Thus, this applicant would be entitled to apply for bail. However, as state pointed out, for a serious offence like murder, the Court should not shut her eyes to the fact that on conviction, the sentence could be death. Indeed, I am alive to that fact. The fear of conviction of such a serious offence would make it attractive for one who is released on bail to consider absconding. Therefore, as requested by the State, the conditions should be stringent.

That said, the constitutional principle of presumption of innocence and the right to apply for bail should be of paramount interest to this Court. This applicant has been on remand for nearly 5 years. Under such circumstances, the State cannot promise him an expeditious trial when he has had to wait for that long and there are no guarantees of a quick disposal of his appeal.

What is important that is this applicant has in his affidavit shown that he has a fixed place of abode. He has also presented substantial sureties, one of whom is his

wife with whom he shares a home and the other sureties are within his locality.

Their relationship to him would convince court that they would be in a position to

compel him to attend the trial.

Therefore, I am allowing this application. I am granting bail to the applicant on the

following terms;

1. He will pay Shs. 3,000,000/= in cash to the Court.

2. The sureties shall execute a non cash bail of Shs. 5,000,000/- each.

3. The applicant is to report to the Registrar of this Court at least once every

month for the entire duration of his trial with effect from 15/5/2019.

Should the applicant abuse any of the terms above, his bail shall be liable to be

cancelled.

I so order

Signed

EVA K. LUSWATA

JUDGE

13/5/2019