

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CR-CMA- 108- 2019

- 1. KAPASI FRED**
- 2. TUSHABE FLORENCE KAPASI----- APPLICANTS**

VERSUS

UGANDA ----- RESPONDENT

BEFORE HON. MR. JUSTICE SSEKAANA MUSA

RULING

This is an application for bail pending the trial of the applicants who are charged with the offence of Murder. Counsel for the applicants has applied for bail with an argument that the applicants are of advanced age 63 years and 62 years respectively and were not at the scene of crime and that the suspect who killed the accused was mentioned.

That there are no other criminal charges pending against the applicants and that they will not abscond by presenting substantial sureties and stating his address of abode.

He has also stated that the presumption of innocence is fronted and the constitutional presumption of it is invoked.

Counsel for the state opposed the application stating that they are of advanced age and the conviction carries a maximum sentence. That considering that they

are of advanced age, they can spend their life in prison, the court should put stringent conditions.

DETERMINATION

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. And that the applicant under Article 23(6) (a) of the Constitution states that;

(6) where a person is arrested in respect of a criminal offence-

(a) the person is entitled to apply to the court to be released on bail, and the court may grant that person bail on such conditions as the court considers reasonable;.....

The other applicable laws regarding grant of bail are sections 14(1) and 15(3) (a) of the Trial on Indictments Act. Section 14 provides as follows:-

(14) Release on bail.

(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 recognisance consisting of a bond, with or without sureties, for such an amount as is reasonable in the circumstances of the case, to appear before court on such a date and at such a time as is named in the bond.

(15) Refusal to grant bail.

(1) Notwithstanding section 14, the court may refuse to grant bail to a person accused of an offence specified in sub section (2) if he or she does not prove to the satisfaction of the court –

(a) that exceptional circumstances exist justifying his or her release on bail; and

- (b) *that he or she will not abscond when released on bail.*
- (2) *An offence referred to in subsection (1) is: –*
 - (a) *an offence triable only by the High Court;*
 - (b) *an offence under the Penal Code Act relating to acts of terrorism ...*

... ..
- (4) *In considering whether or not the accused is likely to abscond, the court may take into account the following factors: –*
 - (a) *whether the accused has a fixed place of abode within the jurisdiction of the court or is ordinarily resident outside Uganda;*
 - (b) *whether the accused has sound securities within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail;*
 - (c) *... ..*
 - (d) *whether there are other charges pending against the accused.*

Both Article 23 (6) (a), of the Constitution, and sections 14(1) and 15(3) (a) of the Trial on Indictments Act mandate Court to exercise discretion and grant bail; and to impose such terms and conditions as it considers reasonable for the grant of bail. The overriding principles for admitting a remand prisoner to bail are first, the presumption of innocence; which is that an accused person is presumed innocent, except where he or she has pleaded guilty to the charge, or the prosecution has established beyond reasonable doubt that such person perpetrated or participated in the offence charged. Second, there is need to afford an accused person adequate opportunity to prepare for his or her defence which obviously cannot be properly done when on remand. These principles are respectively enshrined in Article 28 (3) (a), and (c) of the Constitution.

The grant of bail is a very delicate matter and certainly needs a serious examination when the court decides against the accused person. The liberty of a person is of great importance and is a fundamental right of every citizen guaranteed under the Constitution.

The grant of bail is an exercise of discretion, it would be impossible to lay down any invariable rule or evolve a *straight-jacket* formula. The court must exercise its discretion having regard to all relevant facts and circumstances.

The main considerations which normally weigh the court in non bailable offences basically are;

- i) The nature and seriousness of the offence;
- ii) Character of the evidence;
- iii) Circumstances which are peculiar to the accused;
- iv) A reasonable possibility of the presence of the accused not being secured at the trials;
- v) Reasonable apprehension of the witnesses being tampered with;
- vi) The larger interest of the public or the State and other similar factors which may be relevant in the facts of the case.

The court in applying the said considerations must bear in its mind whether there is any prima facie or reasonable ground to believe that the accused committed the offence. The nature and gravity of the offence coupled with the severity of the punishment in the event of conviction which may be a factor for the accused to absconding or fleeing, if released on bail. Lastly the character, behavior and means, such that there is no likelihood of the offence being repeated or tampering with the witnesses or that there is no danger of justice being thwarted by the grant of bail.

Whether the Applicant has presented substantial sureties. *See, Dr. Ismail Kalule & 3 Others V Uganda (Criminal Miscellaneous Applications 57, 58, 59, & 60 of 2010) [2011], His Majesty Omusinga Mumbere Wesley vs Uganda [Crim. Misc Application No. 75/2016]*

In my estimation, the applicants fulfill most of those conditions. What is important is these applicants have in their affidavits shown that they have a fixed place of abode. They have also presented substantial sureties, Kajoka Geoffrey aged 68 years, applicant's brother and a farmer, Njunwoha Edward aged 52 years, applicants' friend, Beshubeho Edward aged 54 years, applicants' family friend, Muheki Jesca, applicants' daughter and Fanako Justus aged 69 years, applicant's paternal uncle, all residents of Ntungamo District. Their relationship to him would convince court that they would be in a position to compel them to attend the trial.

Therefore, I am allowing this application. I am granting bail to the applicants on the following terms;

1. They will pay shs. 1,000,000/= each in cash to Court.
2. The sureties shall execute a non cash bond of shs. 5,000,000/= each.
3. The applicants are to report to the Registrar of this Court every 15th day of the month for the entire duration of his trial with effect from 15/02/2020.

I so order

SSEKAANA MUSA
JUDGE
24th January 2020.