

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT MBARARA**  
**CRIMINAL MISCELLANEOUS APPLICATION No. 96 OF 2019**

**KYARIKUNDA ADRINE.....APPLICANT/ACCUSED**

**VERSUS**

**UGANDA.....RESPONDENT/PROSECUTOR**

**BEFORE: HON JUSTICE SSEKAANA MUSA**

**RULING**

This is an application for bail pending trial. The applicant is indicted for the offence of **Murder c/s 188 and 189 of the *Penal Code Act***.

The applicant is a female adult Ugandan, a resident of Rwabuganga cell, Ngarama division of Isingiro district. It is alleged that on the 20<sup>th</sup> June 2019, the applicant and others still at large at Rwabaganga village in Isingiro district murdered a one Bitwiromunda Lawrence.

This application is premised on the following grounds;

1. The applicant has never pleaded guilty and she is presumed innocent until proven guilty.
2. The applicant has a permanent place of abode in Rwabaganga cell Ngarama parish, Ngarama subcounty, Isingiro District within the jurisdiction of High court.
3. That the applicant has just given birth and has a very young baby whereof both need extreme care that cannot be obtained in prison.
4. The applicant shall not interfere with the investigations of the police since they are complete.
5. The applicant has substantial sureties in court who are ready to guarantee her attendance in court.

6. The applicant shall and is ready and willing to abide with the court terms and conditions for her release.

The applicant filed an affidavit in support of the application.

The applicant brought two sureties; Lubega Silver from Nyanongo village, the Chairman LC III, Nyanongo village, the cousin to the applicant, a retired civil servant, aged 50 years as well as Kyomugisha Dinnah, a sister to the applicant aged 33 years, a business woman from Kakyazo, Ngarama sub county. Both sureties provided copies of their National identity cards as well as their mobile phone contacts.

The respondent opposed the application stating that the applicant is indicted for an offence of capital nature and that her level of participation was high in the matter and is likely to abscond from the trial. The respondent submitted that the applicant on ground 3 did not attach any evidence to show that the prison cannot give the medical care. Counsel for the respondent prayed that bail is denied.

At the hearing the applicant was represented by Matovu Suwaya while the state was represented by Grace Amy.

According to Article 23 (6) (a) and 28 (3) of the Constitution of the Republic of Uganda, persons accused of criminal offences have a right to apply for bail. However, the grant of bail is discretionary to the court (see *Uganda Vs Kiiza Besigye; Const. Ref No. 20 OF 2005*).

In the determination whether or not the applicant is likely to abscond and not turn up for trial is the question, whether he/she has a fixed place of abode within the jurisdiction of this court.

This court is satisfied that applicant has a permanent residence, there are substantial sureties to stand for her and there is no credible evidence that once released on bail, she will interfere with the investigations of the case. There are also no other criminal charges pending against the applicant.

However the applicants is charged with a very grave offence in respect of which the law stipulates that in order to be released on bail, the applicant must prove to the satisfaction of court an exceptional circumstance (see **section 15(3) of the Trial on Indictments Act, Florence Byabazaire vs Uganda High Court Miscellaneous Application Number 284 of 2006.**

It was submitted that the applicant has just given birth and has a very young baby whereof both need extreme care that cannot be obtained in prison. However, no evidence was adduced to show that there is need for special medical attention or care for both the applicant and the baby that cannot be provided by the prison. The applicant therefore, has not proved any exceptional circumstance in this application.

This court, of course, has in the exercise of its overall jurisdiction, powers to grant bail, even in absence of an exceptional circumstance being proved. Court does so through the judicial exercise of its discretion. The test this court has set is that: *“The burden is upon the applicant to satisfy court by putting forth before court a set of facts, beyond the ordinary considerations for bail, upon which the court can act, in the exercise of its discretion, to admit the applicant to bail”*(See: *High Court of Uganda at Gulu Miscellaneous Application Number 0037 of 2008: Bongomin Richard Akal vs Uganda, unreported*).

On the basis of the evidence put forward, court is not satisfied that this is a case where it should exercise its discretion to grant bail to the applicants. The nature of the murder was skillful involving use of toxic or poisonous substance. The applicant having a baby should be the basis for the grant of bail and also considering that the circumstances of how the baby was born are not clarified to this court.

The death of the deceased is surrounded in the misunderstandings in the family and any release of the applicant or other suspects may jeopardize the smooth progress of the case. The applicant may tamper with the witnesses.

Bail is denied.

The application is accordingly dismissed.

I so order.

**SSEKAANA MUSA**

**JUDGE**

**24<sup>th</sup> January 2020**