

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT MBARARA
MISCELLANEOUS CRIMINAL APPLICATION No. 80 OF 2019
(Arising from H.C Cr. Case. No. 104 of 2018)

KYOKUSIIMA MONICA:.....APPLICANT

VERSUS

UGANDA:.....RESPONDENT

BEFORE: HON JUSTICE SSEKAANA MUSA

RULING

This is an application for bail pending trial of the applicant who is charged with the offence of murder contrary to sections 188 and 189 of the Penal Code Act Cap 120. The applicant and a one Kyomugisha Julian on the 28th day of October 2018, at Kimuri Cell in the Isingiro District are alleged to have murdered a one Tumwebaze Innocent.

The application was supported by the affidavit of the applicant wherein the grounds of the application are briefly that;

1. It is the applicant's constitutional right to be released on bail on the discretion of court.
2. The applicant has a fixed place of abode within the jurisdiction of this honourable court.
3. The applicant has sound sureties who will ensure that he abide by the conditions of bail set by this honorable court.
4. It is just and equitable that the applicant should be released on bail.

The respondent objected to the application at the hearing on grounds that;

1. The applicant is charged with a grave offence.
2. The sureties presented by the applicant are not substantial.

3. Although there is a presumption of innocence, the court reserves the right not to grant bail.

The applicant was represented by Lydia Ahimbisibwe whereas the state was represented by Izikuru Gloria. –Asst DPP

At the hearing, the applicant presented to the court three sureties that is;

1. Muhumuza Benard a brother to the applicant aged 45 years from Kamoli Ngarama Isingiro district.
2. Kafeero Yusuf from Kyakashama cell Ngarama cell Isingiro district, a farmer and former councilor LCIII, a brother in law of the applicant.
3. Kyohirwe Joslin from kimuri cell Ngarama parish/ sub/county Isingiro district, a sister to the applicant.

All the sureties presented a letter of recommendation from the LCII chairperson Ngarama LCII.

The decision whether or not to grant bail is of fundamental importance in the process of prosecution and trial of a criminal case. Under **Article 28(3)** of the Constitution of the Republic of Uganda, every person is presumed innocent until proved guilty or pleads guilty. Consequently, an accused person should not be kept on remand unnecessarily before trial. Accused persons have a right to apply for bail by virtue of **Article 23 (6) (a) and 23 (3)** of the *Constitution of the Republic of Uganda*, the grant of bail is discretionary to the court (see *Uganda v. Kiiza Besigye; Const. Ref No. 20 OF 2005*).

In well deserving cases the accused persons should indeed be granted bail if they fulfill the conditions for their release. An applicant should not be incarcerated if he has a fixed place of abode, has sound sureties capable of guaranteeing that he will comply with the conditions of his or her bail and is willing to abide by all other conditions set by the court.

The applicant in this case has sworn to have a fixed place of abode within the jurisdiction of the court and has presented three sureties before to ensure her return to trial.

The state has objected to the grant of the application citing discrepancies with the sureties.

The requirement for and duties of sureties cannot be underestimated, for they are seen by court as the members of the public who will police the applicant in their area of residence and ensure their attendance for the trial. They therefore must be persons of integrity, mature and have close geographical and where possible blood proximity to the applicant.

The second surety stated that he is a former Councilor LCIII but the same wasn't stated in his introductory letter from the Local authority whereas the third surety National Identity card shows that they are from market cell whereas they have an introductory letter from a different local authority. The sureties presented have not satisfied me that they will ensure the applicant's return for trial. They have no control over the witness to ensure that she does not jump bail.

Furthermore, the circumstances surrounding the alleged offence expose the applicant to the danger of retaliation/revenge from the family of the deceased.

In *Abindi & Anor v Uganda (Miscellaneous Criminal Application No. 0020 OF 2016)* Justice Stephen Mubiru held that; *"In coming to a decision, the court must not lose sight of the fact that the applicants are presumed innocent but at the same time will not ignore the fact that their committal for trial, at a bare minimum, is based on a reasonable suspicion."*

There is a likelihood that due to the marital conflicts surrounding the applicant's marriage to the deceased and the consequent suspicion that the applicant murdered her husband, the family of the deceased might pose a danger to the applicant for the death of their son.

I therefore find the circumstances of this case do not warrant the grant of bail.

Bail is denied.

The application is accordingly dismissed.

I so order.

SSEKAANA MUSA

JUDGE

24th January 2020