

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-CR-MA-NO.066/2019

MELISERINA FURAHA ----- APPLICANT

VERSUS

UGANDA RESPONDENT

BEFORE HON. MR. JUSTICE SSEKAANA MUSA

RULING

This is an application for bail pending the trial of the applicant who is charged with the offence of murder. Counsel for the state objected the application stating that the offence is grave for killing her husband and she hired the other accomplices. That she had fled to Tanzania for 2 years

Counsel for the applicant submitted that the allegation that she fled to Tanzania for 2 years is not born out of evidence. That she will not abscond by presenting substantial sureties and stating her address of abode.

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.

In the converse, is the need for Court to determine whether in the circumstance of the case, the Applicant will turn up for trial or abscond when granted bail. There are well established guidelines Court should adhere to, in the exercise of its discretion, in considering the issue of bail. These include the nature or gravity of the offence the accused is charged with, the severity of the sentence that could result therefrom if conviction is secured, the antecedents of the Applicant in so far as they are known, whether or not the Applicant has a fixed place of abode within the jurisdiction of the Court, the likelihood of the Applicant interfering with the prosecution witnesses, and 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 applicant has failed to fulfill most of those conditions. What is important is the applicant must prove that she has a fixed place of abode. The counsel for the state submitted that the applicant had fled to Tanzania for 2 years an aspect that needed proof beyond reasonable that absconding from trial will not suffice, however in her affidavit in support of the application, the 'applicant referred to the letter allegedly written by the Regional DPP South Western Region which will have to be verified given the fact that counsel for the state states that the letter was never served to the police nor has the DPP been

informed of such a letter. The applicant has presented substantial sureties, Rubahamya Patrick aged 52 years, applicant's brother and a businessman, Tumuhairwe Nicholas aged 45 years, applicant's cousin brother all residents of Kikagate Town Council, Isingiro District.

Considering the gravity of the offence and the circumstances surrounding the case, it would be safer for the applicant to remain in custody.

Therefore, I am inclined to disallow this application. I am denying bail to the applicant until the circumstances are favourable for her release.

I so order

SSEKAANA MUSA
JUDGE
24th January 2020.