

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT MBARARA**  
**MISCELLANEOUS CRIMINAL APPLICATION No. 122 OF 2019**  
**(Arising from H.C Cr. Case. No. 040 of 2018)**

**MUGARURA JULIUS:.....APPLICANT**

**VERSUS**

**UGANDA:.....RESPONDENT**

**BEFORE: HON JUSTICE SSEKAANA MUSA**

**RULING**

This is an application for bail pending trial of the applicant who is remanded at Mbarara Central Prison charged with the offence of murder contrary to sections 188 and 189 of the Penal Code Act Cap 120. It is alleged that the applicant on the 25<sup>th</sup> day of May 2019 at Kyenkuku Cell in Ntungamo District murdered Ananura Onani.

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

1. The applicant has been charged with the offence of murder c/s 188 and 189 of the Penal Code Act but he has neither pleaded guilty nor been proved guilty and is still presumed innocent until the contrary is proved.
2. That the applicant has a permanent place of abode at Kyenkuku Cell, Butanda Parish, Ihunga sub county, Ntungamo District where he has a home and children.
3. That the applicant has substantial sureties ready to guarantee his return for trial.
4. That it is fair, reasonable and in the interest of justice that this application be granted in so far as in the event of acquittal the

applicant will never be compensated for the sufferings he will have gone through while in prison.

Counsel for the state objected to the grant of this application on grounds that the applicant was indicted for a grave offence and that there was a likelihood that the applicant would interfere with prosecution witnesses since they are family members. Counsel further stated that the applicant is a violent person who is going back to the same area hence prayed for dismissal of this application.

At the hearing the applicant presented two sureties that is;

1. Mugenyi Samuel aged 45 years secondary school teacher Ruhanga Adventist SS resident of Kyenkuku Butanda Parish.
2. Tumwebaze Didas aged 44 years resident of Kyenkuku, a farmer and elder brother to the applicant.

The applicant was represented by Mugarura Robert while the respondent was represented by Amy Grace at the hearing.

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*).

Justice E.K Kabanda in *Kanyamunyu & 2 Ors v Uganda (HCT-00- CR-CM-0369 – 2016)* held that “*The accepted position in the cited cases of Uganda vs. Col (RTD) Dr. KiizaBesigye (Supra) and Hon. Guma Gumisiriza David vs. Uganda, High Court Criminal Misc. Application No.023 of 2011 (Mbarara) is that in considering whether to or not to grant bail, the court would need to balance the Constitutional right of the applicant, the needs of society to be protected from lawlessness and considerations which flow from people being remanded in prison custody which welfare and that of their families and not least the effect on prison remand conditions if large numbers of unconverted people are remanded in custody. This is not all. The Constitutional right to apply for bail ought to be*

*balanced with the other peculiar circumstances of the case. Circumstances that guide the exercise of the discretion whether to or not to grant bail is permitted by Section 15 (2) of the Trial of Indictment Act."*

With that regard, I find from the facts presented that the applicant is a violent man whose lawlessness the society and his family ought to be protected from. The summary of the case on file indicate the violent nature demonstrated by the applicant on his own family and the family would be safer if the applicant were kept in police custody until completion of the trial. I also find the likelihood that the applicant will interfere with the witnesses since most of the likely prosecution witnesses are family members of the applicant.

In *Oringi v Uganda (MISCELLANEOUS CRIMINAL APPLICATION No. 0011 OF 2016)* Justice Stephen Mubiru held: *"In my view, in the absence of proof of exceptional circumstances, a court should be slow to grant bail to a person accused of an offence committed in the context of domestic violence unless satisfied that the person poses no danger to victims or witnesses when released on bail. Release of the person on bail should only be made where court is satisfied that such release is not likely to adversely affect the safety, wellbeing and interests of an affected person or witness considering the complexities of family violence, and the degree of risk to which victims and witnesses can be potentially exposed."*

In that same spirit, bail is denied and the application is dismissed.

I so order.

**SSEKAANA MUSA**  
**JUDGE**  
**24<sup>th</sup> January 2020**