

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MBARARA
HCT-05-CR-CM NO. 115 OF 2019**

KEITESI SHALLON KATUREBE=====APPLICANT/ACCUSED

VERSUS

UGANDA=====RESPONDENT/PROSECUTOR

BEFORE HON. JUSTICE SSEKANA MUSA

RULING

This application is brought by way of Notice of Motion under **S. 14 (1) (a) (b),3 and 4 of the Trial on Indictments Act.**

This is an application pending trial wherein the applicant is indicted for the Murder of her mother-in-law Furida Kabaterine. The Applicant was represented by Sam Dhabangi of M/s Dhabangi & Co Advocates Nuwagaba Collins while Izikuru Gloria (Asst DPP) appeared for the state.

The grounds of the application as presented and supported by the affidavit of the applicant are as follows;

1. That the Applicant invokes the presumption of innocence for she had no cause to kill her mother in law.
2. That the Applicant is married with children and has a place of abode at Kangarame Kyrafoora Rugarama NTUNGAMO District within the jurisdiction of this honourable court.
3. That the Applicant has no previous criminal record.
4. That there are no other criminal charges pending against the applicant.
5. That the Applicant has substantial sureties who are prepared to guarantee any return for trial
6. That the Applicant will not abscond.

Counsel for the Applicant contended that accused has a fixed place of abode with the husband and son of the deceased ar Kangarame Kyrafoora Rugarama North NTUNGAMO District within the jurisdiction of this honourable court. He further argued that there are no previous criminal records and there are no other charges pending against the accused. The applicant invoked her presumption of innocence and presented to court two sureties to guarantee that the applicant will report to court whenever required.

The applicant, through duly signed letters from the Chairperson L.C 1 of Kangarama cell Kyrafoora parish presented two sureties to wit Katurebe John aged 50, a farmer and resident of Kangarame Kyrafoora Rugarama Ntungamo district and husband to the

Applicant. The second surety is Bwampere Yorakamu aged 70, he is the chairperson and immediate neighbour of the applicant.

On the other hand, the state argued that the applicant is likely to jump bail. That there are no exceptional circumstances to warrant her grant of bail. The state argued that although the sureties appear to be substantial, it is the discretion of Court to grant bail. That court should deny the applicant bail and in the event that court grants her bail the court should set stringent terms.

Having listened to the arguments of both parties and in consideration of the evidence provided there to, I have come to the following conclusion;

The legal essence behind bail is in respect to upholding one's right to personal liberty. This is especially the product of the presumption of innocence as protected under Article 28 (3) of the Constitution of the Republic of Uganda. A bail applicant must not be deprived of his/her freedom unnecessarily or as merely punishment where they have not been proved guilty by a competent court of law. This principle of protection of personal liberty was further cemented in the case of **Col (Rtd) Dr. Kizza Besigye v Uganda Criminal Application No.83 of 2016** wherein Hon. Justice Masalu Musene was of the holding that "...court has to consider and balance the rights of the individual, particularly with regard personal liberty..." And further quoting the famous words of Hon. Justice Ogoola PJ (as he then was) in **Criminal Misc. Application No. 228 of 2005 and Criminal Misc. Application No. 229 of 2005** wherein the learned Justice had this to say:

"Liberty is the very essence of freedom and democracy. In our constitutional matrix here in Uganda, liberty looms large. The liberty of one is the liberty of all. The liberty of one must never be curtailed lightly, wantonly or even worse arbitrarily. Article 23, clause 6 of the Constitution grants a person who is deprived of his or her liberty the right to apply to a competent court of law for grant of bail. The Court's from which such a person seeks refuge or solace should be extremely wary of sending such a person away empty handed- except of course for a good cause. Ours are courts of Justice. Ours is the duty and privilege to jealously and courageously guard and defend the rights of all in spite of all."

This was further confirmed by Hon. Justice Stephen Mubiru in the case of **Abindi Ronald and Anor v Uganda Miscellaneous Criminal Application No. 0020 of 2016** stating that;

"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."

The Court's discretionary powers to grant bail are enshrined under Section 14 (1) of the Trial on Indictments Act and the conditions under which bail is to be granted under Section 15. These circumstances are broken down to proof of exceptional circumstances like grave illness, a Certificate of no objection from the Director of Public Prosecution, infancy or advanced age; and the fact that the accused will not abscond to be proved by the accused having a fixed place of abode, sound sureties, among others.

However it is trite law that proof of exceptional circumstances is not mandatory as courts have the discretion to grant bail even where none is proved.

Hon. Justice Stephen Mubiru in the earlier quoted case of Abindi Ronald and Anor v Uganda was of the view that “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.”

In the instant case I find that the Applicant has provided substantial sureties in two outstanding sureties especially as they are close kin who have the ability to compel the Applicant to comply. The Applicant has also proved that she has a fixed place of abode within the jurisdiction of this honourable court. The state has not adduced any evidence to show that the applicant will abscond if granted bail.

This court does not agree with learned Counsel for the state that the applicant does not have exceptional circumstances to warrant grant of bail. However I do agree with her that the court should exercise its discretion and set stringent terms to ensure that the applicant will report to court whenever required to.

Mugisha Ronald V Uganda HCT- 01-CR-CM-NO-050 of 2018 where in His Lordship Wilson Masalu Musene was of the view that;

“Since the sureties appear responsible persons who will ensure the accused returns to court to stand trial, and in view of the presumption of innocence under Article 28 (3) of the Constitution of the Republic of Uganda, 1995, I find and hold that this is a fit and proper case to grant bail to the Applicant.”

In the same spirit of the above arguments and authorities I find and hold that the application is allowed and bail hereby granted on the following conditions:

1. The applicant is to be bound in their own recognizance of UGX 5,000,000/- cash.
2. Each of the two sureties shall execute a non cash bond of 10,000,000/- .
3. The applicant will be reporting to the registrar of the criminal division once every two weeks from the passing of this ruling.

I so Order

SSEKANA MUSA
JUDGE
24th January 2020