

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MBARARA**  
**HCT-MA NO. 29 OF 2019**  
**(Arising out of BUSH-23-A--CO—006/2017)**  
**(DPP CASE NO. MTM--CO-126/2017)**  
**(POLICE CASE NO. MTM-CRB-151/2017)**

**TUMUSIIME DAVID=====APPLICANT**

**VERSUS**

**UGANDA=====RESPONDENT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

This application seeking bail pending hearing is brought by way of Notice of Motion as under **Article 23 (6) (a) and Article 28 (3) (a) of the Constitution. Rule 2 of the Judicature (Criminal Procedure) (Applications) Rules S.I 13-8).**

The Applicant was charged with the offence of murder contrary to Section 188 and 189 of the Penal Code Act, having allegedly murdered his father a one Burongoza Nathan. He has not pleaded guilty and is on remand. The Applicant was represented at the hearing of this application by Counsel Paul Tusubira whilst Amy Grace represented the state.

The grounds of the application as presented under the Notice of Motion and supporting affidavits are as follows;

1. It is a constitutional right of the applicant to apply for bail.

2. This honourable court is vested with jurisdiction to grant bail to the applicant.
3. The applicant does not admit the offence and is presumed innocent until proven guilty.
4. The Applicant has no other charges pending against him.
5. The Applicant has a fixed place of abode within jurisdiction of this honourable Court.
6. The Applicant has substantial sureties.
7. The Applicant though committed for trial in this honourable Court, the hearing is not fixed.

At the hearing, counsel for the Applicant contended that applicant has been on remand for three (3) years without trial, has substantial sureties in the persons of Kihembo Gloria's, a 28 year old cousin and Twinamatsiko Justus, a 40 year old cousin; both of whom claim to reside in the same location and understand the roles required of a surety.

The state opposed the request for granting arguing that murder is a grave offence and worse still where it was allegedly committed against a biological father. And that the letters provided by the sureties do not explain why they were written.

I have carefully considered the arguments of both parties, evidence on file and the law applicable, and thereby come to the following conclusions;

The spirit of the grant of bail is embodied in Article 28 (3) (a) of the Constitution which provides that all person charged with a criminal offence shall be presumed innocent until proved guilty. This provision is intended to safeguard the right to personal liberty of every citizen which should not lightly or arbitrarily deprived.

It is further supported by Article 23 (6) (a) which provides for the automatic right of an accused to apply for bail, albeit the grant of it being the discretion of Court.

This discretionary power of the Court to grant bail is enunciated under Section 14 (1) of the Trial on Indictments Act which provides that High Court may at any stage in the proceedings release the accused on bail, upon satisfaction of a recognizance.

The circumstances under which Court can grant bail are spelt out in Section 15 of the above-mentioned Act, including exceptional circumstances and the fact that the accused will not abscond. Exceptional circumstances include grave illness, presentation of a Certificate of no objection from the Director of Public Prosecutions, and infancy or advanced age. Whilst the satisfaction that the accused will not abscond is consistent of proof of the Applicant having a fixed place of abode, production of sound sureties, the consideration whether the accused failed to comply with bail conditions on previous occasions, and the presence of pending charges.

In the instant case, the Applicant contends that they have a fixed place of abode and sound sureties.

In the case of **Abacha v Uganda (Miscellaneous Criminal Application No. 0004 of 2016)**, Hon Justice Stephen Mubiru ruled that;

*“In bail applications, courts should lean in favour of and not against the liberty of the accused as long as the interests of Justice will not be prejudiced. It is for that reason that this court is empowered to exercise its discretion to grant bail.”*

However, in the case of **Abindi & Anor v Uganda (Miscellaneous Criminal Application No. 0020 of 2016)** court held that:

*“The decision whether or not to grant bail is of fundamental importance in the process of prosecution and trial of a criminal case. The results of such a decision can have far reaching consequences for the liberty of the accused, the safety of victims of crime and the public in general interested in the integrity of the criminal justice system. It is a decision that must be*

*reached after careful consideration of the material presented to court, taking into account the risk posed to victims, the public and the course of justice, carefully balancing all interests involved and ensuring to the extent that it is possible, that none of the interests is unduly prejudiced at the expense of another. The applicable principle is that of upholding the liberty of the individual, while simultaneously protecting the administration of justice."*

In the instant case, and especially having in mind the antecedents of the accused as laid down in the Summary of the case, fleeing the scene of the crime and hiding for more than two (2) months and did not even attend the deceased father's funeral. These were the acts of a seemingly guilty person and it cannot be assumed that he would not try do the same fleeing antics.

Generally, an applicant should not be incarcerated if they have a fixed place of abode and sound sureties. But after careful perusal of the file, it can be said that the fixed place of abode has not been established as he often had to hide at siblings' homesteads. As for the sureties, the age and relationship of the provided sureties being cousins does not provide a comforting satisfaction for curtailing his fleeing or ensuring compliance with the bail conditions.

The application is hereby disallowed; bail not granted.

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