

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

**MISC. APPLICATION NO. 20 OF 2009
Arising from Mukono Criminal case No. 124 of 2008**

HON. GODI H. AKBAR.....APPLICANT/ACCUSED

VERSUS

UGANDA.....RESPONDENT/PROSECUTOR

BEFORE: THE HONOURABLE MR. JUSTICE V. T. ZEHURIKIZE

RULING

This is an Application for bail brought under Article 2 (1), 23 (6) (a) and 28 (1) (3) of the Constitution of Uganda 1995 and Sections 14 and 15 (1) (b) (c) of Trial on Indictments Act.

The grounds of the Application are set out in the Notice of Motion and expounded in the supporting affidavit. As highlighted by Dr. Maranga Counsel for the Applicant, briefly the grounds are that the Applicant is charged with Murder c/s 188 & 189 of the Penal Code Act.

He has been in custody since the 12th day of December 2008. That although he has been committed for trial in the High Court, it is not known when the trial will take place. That he is a Member of Parliament for Arua Municipality which Constituency has continued to miss representation in Parliament. That he cannot interfere with investigation, which in any case, are already over.

That he will not interfere with State witnesses as feared by the prosecution. That he does not even know the witnesses the state intends to produce.

That his constitutional right to a speedy trial has been violated, while he is presumed innocent until proved guilty.

Counsel presented four sureties whose particulars are on record. He asserted that the applicant has a permanent place of abode and the details thereof are on record.

Further, Dr. Maranga attached the affidavit in support of the objection to bail sworn by Detective Superintendent of Police one Victor Aisu especially on the allegations that he witnesses have expressed fears of being harassed and/or interfered with by the Applicant.

Counsel contended that unsubstantiated allegations of fears that his client will interfere with State witnesses were not enough to deny bail to the applicant. He cited to me the case of **Panju V. R [1973] EA 282**. He stressed that admittedly his client does not know the prosecution witnesses and that there is no way he can interfere with such witnesses he does not know.

Counsel further contended that the issue of bail is derived from the presumption of innocence which is enshrined in our Constitution. He referred this court to the **Constitutional Reference No. 20 of 2005; Uganda (DPP) v. Col. Rtd. Dr. Kiiza Besigye** to buttress his point. He also referred to **Francis Ogwang Olebe V. Uganda H.C. Misc. Application No. 25 of 2003**. The above two cases are unreported.

In reply Mr. Sewankambo Hamuza, the learned State Attorney contended that since the Applicant has been committed for trial, it means that the Respondent (State) has found evidence indicating that he participated in the commission of the offence.

Relying on the **Besigye's case (supra)** counsel argued that while considering bail, court will need to balance the Constitutional rights of the Applicant and the needs of society to be protected from lawlessness. That in this regard various factors have to be considered such as the risk of absconding and interference with the course of justice. Counsel explained that as a member of Parliament the applicant is a high profile person and as such likely to interfere with the witnesses by virtue of his position.

Referring to the affidavit of Mr. Aisu the learned State Attorney contended that during the investigations, witnesses expressed fears of being harassed and interfered with by the applicant and that now that he is committed he is in possession of some evidence that might be brought against him. This being a person of the aforesaid status this court should believe what the deponent (Aisu) says.

Mr. Sewankambo had no objection to sureties and I believe rightly so. They are substantial.

I have carefully considered submissions by both counsel and scrutinised the pleadings on record. The main point of contention is that the applicant, a Member of Parliament, being a high profile person, he will use his position to interfere with the witnesses.

The relevant parts of Mr. Aisu's affidavit are:

- “6. That during the inquiries I interacted with the witnesses who expressed fears of being harassed/and or interfered with by the applicant.**
- 7. That these witnesses are delicate and indeed need to be handled with a lot of diligence and sensitivity.**
- 8. That I am not able to disclose the identity of the witnesses in this affidavit for fear of them being harassed and or intimidated by the Applicant.**
- 9. That the applicant is a high profile person, being an Honourable Member of Parliament for Arua Municipality and it is in no doubt that he has influence which he can use to interfere with the witnesses and with the entire investigations if he is released on bail.”**

In the **Kiiza Besigye's case (supra)** the Court had this to say on such allegations as the above at page 11:

“Where facts come to light and it appears that there is substantial likelihood of the Applicant offending while on bail, it would be inadvisable to grant bail to such a person”.
The underlining mine.

At page 12 the Constitutional Court further stated:

“Bail should not be refused mechanically simply because the State wants such orders. The refusal to grant bail should not be based on mere allegations. The grounds must be substantial. Remanding a person in custody is a judicial mind to bear on the matter before depriving the applicants of their liberty.” Underling mine.

Long before in **Panju V. R (supra)** at page 283 the **High Court of Tanzania sitting at Mwanza** had this to say; **“If the Courts are simply to act on allegations, fears, or suspicions, then the sky is the limit and one can envisage no occasion when bail would be granted whenever such allegations are made.”**

In the instant case, while it might be prudent for the State not to disclose the identity of the witnesses, it would have been desirable for the deponent to disclose the grounds or basis for the alleged fears by the witnesses. It was necessary to tell Court as to what makes the witnesses so delicate to warrant the need to handle them with diligence and sensitivity.

Court is not told how the applicant is likely to harass or intimidate such witnesses. Are they, for instance, under his control? As an influential man can't he through his influence interfere with the course of justice while still in prison? Court is not told that the Applicant has done anything that makes the above fears credible.

It is not enough for the prosecution to allege that the undisclosed witnesses are delicate and that for that reason need to be handled with a lot of diligence and sensitivity by keeping the applicant in prison.

The allegations must be reasonably substantiated so that the court can properly exercise its discretion when balancing the rights of the applicant and the interest of society to protect it from lawlessness. Court cannot act on bold allegations which are devoid of any proof.

The overriding consideration in an application of this nature is whether the accused person will turn up for his trial. In the instant case the applicant is a Member of Parliament with a fixed

place of abode within the jurisdiction of the Court. He presented four substantial sureties which were not doubted by the State.

He has not previously been granted bail which he breached. He has no other charges pending against him. There would be no reason to deny him bail merely on speculative fears that he might harass or intimidate some witnesses.

In any case should the applicant take any steps to interfere with State witnesses in any way the prosecution has every right to make the appropriate application for the cancellation of his bail, besides taking other necessary proceedings against him.

Consequently I find that this is a proper case in which court should exercise its discretion in favour of the applicant by granting him bail.

Bail is hereby granted on the following conditions:

- (a) The applicant will execute a non-cash bond of 10,000,000/=.
- (b) Each of the four sureties will execute a similar bail bond.
- (c) The Applicant will not travel outside Uganda without leave of this Court through the Deputy Registrar. For that matter he must deposit his Passport with this court, which will be released to him whenever travelling outside Uganda, with the permission of this Court.
- (d) If the above conditions are fulfilled the applicant will be released on bail but must report to this court every 30 days from today. The first such reporting will be on 10/7/2009 and will continue so reporting till the disposal of the case or as otherwise directed by the Court.

- (e) If any of the above conditions is not fulfilled the Applicant will continue on his remand till the hearing and final disposal of his case.

V. T. ZEHURIKIZE
JUDGE
10/6/2009