

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO.0113 OF 2025
(ARISING FROM CRIMINAL CASE NAK-CR.NO.A-0008/2025 AT NAKAWA CHIEF MAGISTRATES COURT)

1.COL.(RTD) DR. KIZZA BESIGYE.....**APPLICANTS**
2. HAJJI OBED LUTALE

VERSUS

UGANDA **RESPONDENT**

Before: Hon. Lady Justice Rosette Comfort Kania

Ruling

Background

COL.(RTD) Dr. Kizza Besigye and Hajji Obed Lutale (hereinafter referred to as the "1st applicant and 2nd applicant and where the context permits "the applicants") were charged with;

1. Treason contrary to section 23(1)(c) of the Penal Code Act Cap 128
2. Misprision of treason contrary to section 25 of the Penal Code Act Cap 128

The prosecution alleges that the applicants and others still at large between the year of 2003 and November 2024 while in various cities, including Geneva (Switzerland), Athens (Greece) Nairobi (Kenya) and Kampala (Uganda) contrived a plot, act or matter by force of arms to overturn the Government of Uganda as by law established and expressed or declared such plot, act or matter by utterances and overt acts. In the alternative, the prosecution alleged that the applicants and others still at large in the places and in the timeframe aforementioned, knowing that another person intended to commit treason, did not report the same to the authorities or use all reasonable endeavours to prevent the commission of treason.

Legal basis of this application

The applicant brought this application by Notice of Motion under Articles 23 (6) of the Constitution of the Republic of Uganda, 1995, S.15 & 16 of the Trial on Indictments Act Cap 25 and Rule 2 of the Judicature (Criminal Procedure) (Application) Rules S.I 13, for orders that;



a). The applicants be admitted to bail and released from remand/ custody.

The grounds of this application as stated in the application and further detailed in the affidavit in support deponed by the applicant are briefly that;

a). On 21st February 2025 the applicants were charged with treason and mis-prison of treason at the Chief Magistrates Court of Nakawa at Nakawa and remanded in custody.

b). The offences with which the applicants are charged are only bailable by this Honourable court.

c). The applicants are responsible citizens of Uganda who have permanent places of abode as follows; 1st applicant at Buyinja LCI Wampeewo Ward Kasangati Town Council Wakiso District and Rwakabengo A Rwakabengo Ward Southern Division Rukungiri Municipality in Rukungiri District; 2nd applicant at Kisigula Village Cell Mutundwe Ward Gombolola Ssabagabo Makindye Wakiso District for the 2nd applicant.

d). The applicants are not a threat to any investigative or other process and are willing to appear before this Honourable Court for mention or trial as and when required once released on bail.

e). The antecedents of the applicants demonstrate this respect for the law and for any bail processes they have benefited from.

f). The applicants have not been committed to the High Court for trial and are willing to comply with all reasonable conditions set for their admittance to bail.

g). The applicants are of advanced age and have substantial sureties who are willing to ensure compliance with bail conditions once the applicants are released on bail.

h). It is fair and just that the applicants be admitted to bail and released accordingly.

At the hearing, the applicants were jointly represented by Hon. Elias Lukwaga, Mr. Ernest Kaliballa, Mr. Apollo Katumba, Mr. Wanda Samuel, Mr. Samuel Muyizi, Ms. Kunihiro Proscovia, Mr. Kato Tumusiime, Mr. Bayan Turinawe, Mr. Farouk Kamulegeya, Mr. Kintu Micheal, Mr. Amaniya Timothy, Mr. Katto Wilson and Ms. Silas Ogul. The respondent was represented by Chief State Attorney Joseph Kyomuhendo and Chief State Attorney Richard Birivumbuka. Both the applicants and Respondents made oral submissions at the hearing and filed written submissions for which this court is grateful. The said submissions have been considered where necessary.

Submissions

It was submitted for the 1st and 2nd applicants as follows;



Article 23(6)(a) of the Constitution of the Republic of Uganda as Amended (Constitution) spells out the right of an accused person to apply for bail and enables this Honourable Court to grant bail on such conditions as it considers reasonable.

Section 15 of the Trial on Indictments Act Cap 25 (TIA) provides that, this Honourable Court may at any stage of the proceedings release the accused person on bail.

Pursuant to Section 16 (1) and 16 (2) (a) of the TIA, court may grant bail if an accused person is able to prove exceptional circumstances and that they will not abscond from the trial once released on bail. Counsel cited the case of **Attorney General-vs- Joseph Tumushabe, Constitutional Appeal No.3 of 2005** (Supreme Court) where it was held that it is no longer necessary for the applicant to prove exceptional circumstances before they can be granted bail. Counsel further cited the case of **Foundation for Human Rights Initiatives –vs- Attorney General, Constitutional Petition No.20 of 2006**, where court observed that, “ the provisions of section 15 of the TIA were only regulatory and did not take away the discretion of the court to grant bail in deserving circumstances.”

One of the exceptional circumstances listed in law is "advanced age" as is provided under section 16(3)(a) of the TIA and that Guideline 4 of the Bail Guidelines interprets advanced age as the age of 60 years and above. Counsel further submitted that the applicants are 68 and 65 years old respectively and that owing to the advanced age of the applicants, they are not able to manage the harsh conditions in prison. Counsel for the applicants added that the applicants have been in custody since 16th November 2024, a period exceeding 120 days without being committed for trial. Citing the case of **Twesigye Charles v Uganda Criminal Application no.8 of 2011** counsel stated that Courts have recognised that prison conditions are not favourable to the health of old people, who are in any case presumed to be innocent until proven guilty.

Section 16 (4) of the TIA and Guideline 13 of the Bail Guidelines provide that the other factor that the court might take into account in making the decision to grant bail, is whether the applicant will abscond when released on bail. In support of the fact that the applicants will not abscond, Counsel for the applicants stated that although the applicants have been charged with serious/grave offences which carry the death penalty should the applicants be convicted, the gravity of the offence does not bar this Honourable Court from exercising its discretion in favor of the applicants. It was further argued for the applicants that the law has allowed applications to be made even where individuals are charged with serious / grave offences. Counsel added that in many decisions of the High Court, bail has been granted to applicants charged with grave offences including treason, terrorism, aggravated robbery, murder. That in the case of the 1st applicant he has been charged with various grave offences before and released on bail and he not been convicted of any of those offences.

In the case of **Makokha Samuel & 35 others v Uganda Criminal Application No. 24 of 2024**, the International Crimes Division of the High Court (ICD) had occasion to consider the question of gravity of the offence vis-à-vis a bail application, and held that despite the gravity of the allegations against the applicants, this court must determine whether sufficient evidence is presented to indicate the guilt or

innocence of the applicants. The ICD also held that the fundamental principle for a court to release an applicant on bail in the presumption of innocence, and courts should favor the liberty of the accused, provided that doing so does not compromise the interests of justice. It was further submitted for the applicants that the nature of the offences with which the applicants are charged are political offences and that these two are not, on that account alone, the kind of offences in respect of which bail cannot be granted. That the 1st applicant particularly has been charged with various political offences over the years, offences in respect of which no conviction has been returned by the respondent, counsel cited **Makokha Samuel & 35 others v Uganda (supra)**. Counsel submitted that other conditions to be proved before court include; antecedents of the applicant, possibility of a substantial delay in the trial, the likelihood of applicants to attend court, the stage of the proceedings, the likelihood of committing an offence while on bail, the likelihood of the applicant interfering with witnesses. Counsel for the applicants cited the case of **Panju v R [1973] EA 282**, where court held that allegations of interference with witnesses must be substantiated and that such substantiation is not difficult to show.

Counsel for the applicants concluded by stating that, the other factors to consider in applications for bail are whether the applicants have fixed places of abode, have substantial sureties and whether there are no other charges pending against the applicants.

In reply counsel for the respondent submitted as follows;

Section 15 of the TIA and Guideline 3 of the Bail provide conditions that Courts should take into account in considering bail applications including; the substantiality of sureties, nature of the offences, age of the applicant, possibility of interfering with investigations and witnesses, possibility of absconding bail, whether the applicants have a fixed place of abode, applicant's antecedents and sensitivity of the charges.

Guideline 15 of the Bail Guidelines, offers guidance on what to consider while determining the suitability of the sureties the age, work and residence of the sureties, character and the antecedents of the surety, relationship of the surety to the accused/ applicant and other factors as the court may deem fit.

Regarding sureties, the 1st applicant produced 4 sureties, to wit; Hon. Semujju Nganda (a close friend aged 52 years), Hon. Francis Mwijukye (a close friend aged 41 years), Hon. Muhindo Harold Tony (a close friend aged 52 years) and Hon. Nicholas Thadeus Kamara (a close friend aged 50 years). And that the 2nd applicant produced Nagitta Halima Lutale (a wife aged 58 years), Nanfuka Zuhura (a daughter aged 27 years), and counsel Ssewankambo Hamuza (a friend aged 48 years). Counsel submitted that all these sureties presented by both applicants are much younger than the applicants and this makes the applicants superior to their sureties and yet it should be the other round, and that in such a scenario, the sureties are unable to compel and influence the applicants to appear in Court in the event that they abscond. Counsel cited the case of **Mugera John vs Uganda Criminal Miscellaneous Application (International Crimes Division) no.0021/2025**, Hon.Lady Justice Alice Komuhangi Khaukha, held that, ".... it is my considered view that a surety should possess a certain amount of authority and or influence over the applicant."

The sureties presented by the 1st applicant have no authority and or influence over the applicants and it will be hard for them to compel the applicants to comply with bail terms and are therefore not substantial. It was further submitted that the Bail Guidelines require that the letter of introduction from the LC1 should state to court that the surety or applicant is not just a resident but a permanent one in that particular area. This is so because it is a risk to entrust a surety with no known fixed place of abode with an applicant. Whether or not the surety has a fixed place of abode is an issue that should be expressly stated in the letter of introduction and not merely implied. Additionally, counsel submitted that the relationship between the sureties and applicant is paramount and has much bearing on the surety's ability to influence and compel an applicant to attend court when required. The 1st applicant produced only friends as sureties, who don't provide sufficient assurance that the applicant will comply with bail conditions. Counsel added that friends do not have the necessary leverage or influence to ensure the 1st applicant's compliance, and are most likely unwilling to take steps to enforce compliance. Counsel cited the case of **Tumusiime David v Uganda Criminal Application HCT-MA- NO. 29 of 2019**, Hon. Justice Musa Ssekaana held that he was uncomfortable with cousins, even if they had fixed places of abode. Counsel stated that if court was uncomfortable releasing the applicant basing on cousins, then what about the instant case where the applicant presented mere friends. It would be more risky to release the 1st applicant with just friends as sureties. In his submissions, counsel submitted that the sureties have to prove and assure court that they will deploy their time and resources to monitor, influence and compel the applicants to appear in court whenever required and that none of the sureties for the applicants dispensed this requirement, counsel cited the case of **Mugera John vs Uganda, Miscellaneous Application No. 002 of 2022**, where Hon. Lady Justice Elizabeth Jane Alividza upheld the above view. It was further submitted that none of the sureties provided their work or business identity cards, what was annexed are passports and National ID which have no relationship with business or employment or gainful income and disposable income which are critical in assessing their substantiality. In **Asimwe Annah vs Uganda Criminal Miscellaneous Application No. 81/2024**, Court held that a job identity card alone is not sufficient to demonstrate the capacity of a surety to meet the terms of the bond. Therefore, failure to demonstrate financial capability by sureties regardless of their position in society or government, is fatal and goes to the core in the grant of bail applications.

Advanced age of the applicants, is not the only ground or consideration for bail under section 15 of the Trial on Indictments Act under which this application was brought. This court has to balance the interests involved as was held in the case of **Tumusiime David v Uganda Criminal Misc. Application HCT-MA NO.29 of 2019**. The offences with which the applicants are charged with are serious, grave, of public interest, impact on national security and the applicants will abscond bail. In **DPP vs Col.(RTd) Dr. Kiiza Besigye, Constitutional Reference No.0020 of 2005**, the justices of the Constitutional Court held among other things that, ".....where there is a substantial likelihood of the applicant failing to surrender or turn up for trial, bail may only be granted for less serious offences. The court must weigh the gravity of the offence and all other factors of the case against the likelihood of the applicant absconding....."

In the case of **Foundation for Human Rights Initiatives-vs Attorney General, Supreme Court Constitutional Appeal No.0003 of 2009**, the Justices of the Supreme Court held among other things that, ".....this Article

imposes on Court the duty to ensure that they do not only consider the rights of the accused person applying for bail. Rather, the court should also consider the interests of the society at large...."

The 1st applicant has another pending charge pending against him at Buganda Road Chief Magistrates Court, which is part heard. Section 15(4) TIA provides other pending charges, as a consideration court should take into consideration in deciding whether or not to grant bail in an application of this nature. In the case of **Hon. Allan Ssewanyana Aloysius and Hon. Ssegirinya Muhammad v Uganda Masaka Criminal Application No. 018 of 2021**, Justice Lawrence Tweyanze while dismissing the application for bail held that, in an earlier application granted the applicants bail, Lady Justice Victoria Nakintu based on the fact that they had no other charges pending against them, but at the time of determining the present application, they have charges of murder against them in addition to those they were earlier charged with. It was therefore submitted for the respondent that, the pending charges against the 1st applicant, are a good ground to dismiss his application since he committed the current offences while on bail vide Buganda Road Criminal case no. 624 of 2023.

In rejoinder, in respect to the fixed place of abode, it was submitted for the 1st and 2nd applicants that whereas the respondent contends that both applicants do not have fixed places of abode because they did not provide land titles or tenancy agreements to show the fixed places of abode, and therefore they may not be located or held accountable if they jumped bail. Counsel for the applicants submitted that both 1st and 2nd applicants provided evidence, on oath, by way of two affidavits and attached LCI letters in support by each applicant, about their respective fixed places of abode. In the case of the 1st applicant, he provides two locations at Buyinja LCI Wampeewo Ward Kasangati Town Council Wakiso District and Rwakabengo A Rwakabengo Ward Southern Division Rukungiri Municipality in Rukungiri District and in the case of the 2nd applicant, the location is at Kisigula Village Cell Mutundwe Ward Gombolala Ssabagabo Makindye Wakiso District, also within the jurisdiction of this Honorable Court.

Regarding pending charges, counsel for the applicants submitted that the 2nd applicant has no pending charges against him and that the 1st applicant having a pending charge at Buganda Road Court cannot be used to dismiss the 2nd applicant's application as submitted by the respondent. Counsel further stated that the respondent has not provided any evidence of the stage at which the case at Buganda Road is or whether in fact the 1st applicant has been put on his defense or found guilty. That he does not cease to enjoy the constitutional presumption of innocence because he has a pending case. Counsel for the applicants stated that, the fact that the 1st applicant was charged with the current offence while on bail in respect of the Buganda Road case cannot be used against him, as it is the same State that charged him that is now using those charges to argue that he should not be granted bail alleging he re-offended while on bail. Regarding the possibility of interfering with witnesses and investigations, counsel for the applicants submitted that in **Panju v R [1 9731 EA 282]**, it was held that allegations of interference with witnesses must be substantiated and that such substantiation is not difficult to show. Counsel submitted that there is no evidence that has been placed before the Honorable Court by the respondent to show the alleged strong likelihood to interfere with witnesses or investigations. Counsel prayed that the Honorable Court finds no

likelihood of interference with unknown witnesses or investigations and dismisses the argument of the Respondent on this point.

While submitting in respect of the applicants' age, Counsel submitted that courts can, and in this case should take judicial notice that prisons are not holiday destinations. The fact that there are harsh conditions on remand has been taken note of, including in cases cited by the respondent such as the Okello Augustine case. In respect to possibility of absconding, it was submitted for the 1st and 2nd applicants that since the arguments of the respondent seem to focus more on the 1st applicant, then the arguments should not prejudice the 2nd Applicant and that evidence of the 1st applicant's 'mastery of the game' presumably referring to fleeing from Uganda is not supported by any evidence. Counsel further submitted that, the 1st applicant has demonstrated that in the past, when released on bail, and he required to travel outside the jurisdiction, he only undertook it with the permission of the Court. He would go out of the country and return. Regarding the sureties, it was argued for the applicants that the sureties presented were advised about their role by the Honorable Court and none of them protested or stated they were unable to perform the roles. In **Kawanguzi Nsereko David v Uganda Misc Appln No 426 of 2023**, the Court held as follows regarding sureties, "It is my considered view that, the role of a surety goes beyond the ability to forfeit the bond, bail is not designed as an income generating avenue for courts to which bail applications are made. What is pertinent about sureties is that there must be indication that they have been advised of their roles as sureties, they identified themselves properly and have shown and proved their authoritative relationships in respect to the applicant showing that they are able to exercise their authority and command appearance of the applicant in court when needed.

Counsel for the applicant informed court that the sureties had been informed of their duties in respect of bail, which duties they understood well and committed to executing. Counsel further submitted that, a proposed surety is required to provide (a) a copy of his or her national identity card and (b) an introduction letter from the Local Council I Chairperson of the area where the surety is ordinarily resident as provided under Bail Guidelines. Counsel further submitted that, the ages of all sureties, which range from 27 to 58 demonstrate adult persons capable of understanding what they are undertaking and that none is a minor and none is a person of extreme old age. Therefore, all sureties have provided these documents. Citing the case of **Kigongo Faruq v Uganda Criminal Misc. Appn No 7 of 2024** cited with approval in the Makokha case, where this Honorable Court stated that: "I firmly believe that this court in making its decision must be cognizant of the socio-economic environment in which justice is dispensed particularly the informal nature of the employment of the majority of Ugandans that makes it difficult to possess documentary evidence of capacity to meet monetary obligations. To insist on documentary proof of capacity to meet monetary obligations in the event that the surety is called upon to forfeit the bond is to exclude swathes of the population of Uganda from the opportunity to stand surety for relatives and friends. This would tantamount to discrimination against a section of the society on the basis of their socio-economic class... The courts have long held the view that "if courts are to simply 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."

Counsel for the applicants submitted that the respondent provides no evidence to rebut the grounds relied on by the applicants to in support of their applications. It was prayed for the applicants that, this Honorable Court finds that the applicants have each satisfied the requirements in the law and on the applicable facts to enable this Honorable Court exercise its discretion in their favor and release them from custody, on bail, on reasonable terms.

Determination

(i) Analysis of the law and the evidence

Article 23(6)(a) of the Constitution provides that, "where a person is arrested in respect of a criminal offence, 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." Although the Constitution guarantees an accused person the right to apply for bail, court at all times retains the discretion whether or not to grant an accused person bail. See **Foundation for Human Rights Initiatives-vs- Attorney General Constitutional Petition NO.020 of 2006**. The primary principle for which a court may release an accused person on bail pending trial is the presumption of innocence. This legal principle is enshrined in Article 28(3) of the Constitution which provides that; Every person who is charged with a criminal offence shall be presumed to be innocent until proven guilty or until that person has pleaded guilty.

Section 15(1) of the Trial on Indictments Act in addition to upholding the right of accused person to apply for bail, clothes court with the discretion to release an accused person on bail at any stage of the proceedings.

Guideline 5, of the **Bail Guidelines** provides the general principles which a court may take into account while considering a bail application. The principles include; the presumption of innocence, the right to liberty, applicant's obligation to attend the trial, discretion of the court to grant bail on such terms as court considers reasonable and the need to balance the rights of the applicants and the interest of justice.

Having examined the applicable law on bail, I will now turn to the merits of the application.

Right to apply for bail and courts discretion to grant bail. This ground has already been addressed as above and it is clear that the applicant has the right to apply to court to be released on bail with the court having the discretion whether to grant bail under Article 23 (6) (a) of the Constitution.

Presumption of innocence

This principle of presumption of innocence is a constitutional one and as noted above, the Bail Guidelines require this court to consider the principles of presumption of innocence and personal liberty in determining bail applications. In relation to personal liberty, the active principle in granting bail is that of upholding the liberty of the individual while simultaneously protecting the administration of justice. (see. **Abindi & Another-vs- Uganda; Miscellaneous Criminal Application 20 of 2016 (2017)**).

The presentation of innocence means that an accused person should not be kept in custody and deprived of his freedom unreasonably. Bail should not be refused merely as a punishment as this would conflict with presumption of innocence.

Fixed place of abode and substantiality of sureties

(a) Fixed place of abode

A fixed place of abode for the applicant must be within the jurisdiction of this Honourable Court as it guarantees to the court that the applicant/accused person can be found in the event of absconding bail.

To underscore the importance of the provision of proof of a fixed place of abode, it can be a ground for refusal to grant bail, it is therefore imperative for the court to be persuaded that the accused has a fixed place of abode because it is a pointer to the fact as to whether the applicant is likely to abscond once granted bail.

Section 16(4) of the Trial on Indictments Act is instructive in this respect as it provides 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;

The point made in **Section 16(4) (a) of the Trial of Indictments Act** is amplified by **paragraph 13 (K) of the Bail Guidelines**. While the law does not define the phrase "place of abode", what is important is that the fixed place of abode must be within the jurisdiction of the court considering the bail application. Where the applicant fails to prove this under Section 16 (1) of the Trial on Indictments Act, then the court may deny him bail.

In the case of **Foundation for Human Rights Initiatives-vs- Attorney General Constitutional Petition NO.020 of 2006**, it was held that the nature of the offence, antecedents of the applicants and whether the applicants have a fixed place of abode in the Court's jurisdiction should be strongly considered by the court in an application for bail.

Remmy Kasule J, in **Mugenyi Steven-vs-Uganda Miscellaneous Application NO.0065 of 2004**, held that; "The onus is on the Applicant to satisfy the court that he has a permanent place of abode in a particular village, sub-county and district. This is to enable the court exercise jurisdiction over the applicant while on bail being able to trace his whereabouts whenever it is necessary."

In respect of this application, the applicants state under paragraph 3 of the Notice of Motion and paragraph 1 of 1st applicant's affidavit in support of the application that he has a fixed place of abode within the jurisdiction of this court at Buyinja LCI Wampeewo Ward Kasangati Town Council Wakiso District and Rwakabengo A Rwakabengo Ward Southern Division Rukungiri Municipality in Rukungiri District within the jurisdiction of this court. The applicant submitted a copy of his National Identity card, the original of which he submitted for court's inspection and an introduction letter endorsed by the LCI Chairperson of Buyinja L.C.1 Wampeewo Ward indicating that he is a resident in his area of jurisdiction.

The 2nd applicant states that he has a fixed place of abode within the jurisdiction of this Honourable Court at Kisigula Village Cell Mutundwe Ward Gombolola Ssabagabo Makindye Wakiso District within the jurisdiction of this Honourable Court. The applicant submitted a copy of his National Identity card and an introduction letter endorsed by the LCI Chairperson of Kisigula Village Cell B indicating that he is a resident in his area of jurisdiction.

Paragraph 12(a) (b) of the Bail Guidelines provides that an application for bail shall contain the particulars of the applicant, accompanied by a copy of a National Identity Card and an introduction letter from the LC 1 Chairperson of the area where the applicant resides. The village, parish and district as stated in the introduction letter are well known and are within the jurisdiction of this court. By furnishing Court with a copy of the national identity card and an introduction letter from the LC1 chairman, the applicant has satisfied the onus placed on him to prove he has a permanent place of abode. **See Kayongo Bashir-vs-Uganda Criminal Miscellaneous Application No. 158 of 2019.**

Therefore, the applicants have satisfied the requirement to prove fixed place of abode.

(b) Substantial Sureties

The term "surety" is defined by Paragraph 4 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions Legal Notice NO. 8 of 2022 to mean; "A person who undertakes to ensure that the applicant will appear in court and abide by the bail conditions and who furnishes security which may be forfeited to the State if the applicant fails to appear in court." Therein lies the main duty of a surety.

What is pertinent about sureties is that there must be indication that they have been advised of their roles as sureties, they identified themselves properly and have shown and proved their authoritative relationships in respect to the applicant showing that they are able to exercise their authority and command appearance of the applicant in court when needed.

Section 16 (4) (b) of the Trial on Indictments Act and paragraph 13 (l) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) (Directions), provide that in considering whether an accused is likely to abscond, the court shall consider whether the accused has sound sureties within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail.

Guideline 15 of the Bail Guidelines sets out;

- (1) factors that court shall take into account in determining the suitability of a surety; age, work and residence address, character and antecedents, relationship to the applicant and any other factor court may deem fit.
- (2) documentation in respect of a surety that must accompany an application for bail including; a copy of national identity card, passport or alien identification card, introduction letter from the LCI Chairperson of the area where the surety is ordinarily resident.

The applicants in the affidavits in support of their application aver that they have sound and substantial sureties who have fixed places of abode within the jurisdiction of this Honourable Court and in the event that they are granted bail, they undertake to ensure their compliance with all the terms set by this Honourable Court in the event that the applicants are granted bail.

The 1st applicant presented four sureties as follows:

(i) Hon. Semujju Nganda Ibrahim

A 52 year old male adult, Member of Parliament of Kiira Municipality, a resident of Bweyogerere Division Kiira Municipality. Hon. Semujju is the 1st applicant's close friend. On file are an introduction letter from the LC 1 Chairperson of Bukasa Cell, Kirinya Ward Bweyogerere Division, Kiira Municipality indicating that Hon. Ssemujju is a resident of his area of jurisdiction and a photocopy of Hon. Ssemujju's national identity card. Hon Ssemujju presented his original national identity card for court's inspection.

(ii) Hon. Muhindo Harold Tony

A 52 year old male adult, Member of Parliament for Bukonzo County East, a resident of Katale Busawula Kyengerera Town Council. Hon. Muhindo is the 1st applicant's close friend. On file are an introduction letter from the LC1 Chairperson of Katale Busawule Cell, Kikajjo Ward, Kyengerera Town Council Wakiso district, indicating that Hon. Muhindo is resident of his area of jurisdiction and a photocopy of Hon. Muhindo's national identity card. Hon Muhindo presented his national identity card for court's inspection. Photocopies of the documents are on the record

(iii) Hon. Francis Mwijukye

A 41 year old male adult, Member of Parliament for Buhweju District, a resident of Luteete Kelezia Cell Masooli Ward, Kasangati Town Council. Hon. Mwijukye is a close friend of the 1st applicant. On file is an introduction letter from the LC 1 chairperson of Luteete Masooli Kelezia Cell Masooli Ward Kasangati Town Council Wakiso District indicating Hon. Mwijukye is a resident in his area of jurisdiction and a photocopy of Hon. Mwijukye's national identity card. Hon. Mwijukye presented the original of his national identity card for court's inspection.

(iv) Hon. Kamara Nicholas Thadeus

A 50 year old male adult, the Mp for Kabale Municipality, a resident of Buye Kigowa LCI Bukoto 11 Parish Nakawa Division. Hon. Kamara is a close friend of the 1st applicant. On file is an introduction letter from the LC 1 chairperson of Buye Kigowa I LCI Bukoto II Parish Nakawa Division Kampala indicating that Hon Kamara is a resident of his area of jurisdiction and a photocopy of Hon. Kamara's national identity card. Hon Kamara presented the original of his national identity card for court's inspection.

The 2nd applicant presented 3 sureties as follows:

(i) Nagitta Halima Lutale

A 58 year female resident of Kisugu, Makindye Wakiso District she is the wife of the 2nd applicant. She is a businesswoman engaging in business with her husband. She presented an introduction letter from the LC1

Chairperson of Kisigula Village Cell Mutundwe Ward Gombolola Ssabagabo Makindye Wakiso District indicating that she is a resident of his area of jurisdiction. Mrs. Lutale presented the original of her national identity card for court's inspection.

(ii) Ssewankambo Hamuza

A 48 year old male resident of Kanaabe Village, Ndegge Parish, Ssabagabo Makindye, Wakiso District, he is an advocate Practicing with Ssewankambo and company Advocates. Mr.Ssewankambo is a brother of the 2nd applicant. He presented an introduction letter from the LC 1 Chairperson of Kanaaba Cell, Ndejje Ward, Ndejje Division Makindye Ssabagabo Municipality Wakiso district indicating that he is a resident of his area of jurisdiction. Mr. Ssewankambo presented the original of his national identity card for court's inspection.

(iii) Nanfuka Zura

A 27 year old female resident of Lukuuli Konge Parish Tyaba Zone Kampala District, she is a journalist by profession. Ms. Nanfuka is the daughter of the 2nd applicant. She presented an introduction letter from the LC1 Chairperson of Tyaba Zone LCI Lukuli Konge Parish Makindye Division Kampala District indicating that she is a resident of his area of jurisdiction. Ms. Nanfuka presented the original of her national identity card for court's inspection.

By presenting the originals of their national identify cards and letters of introduction from the LCI Chairperson where they ordinarily reside, the sureties satisfied the conditions set out in Guideline 15 of the Bail Guidelines. The aforementioned guidelines do not provide guidance on the format the introduction letter should take and what it must state. Neither do they make reference to permanency of residence in terms of owning property as alluded to the respondent by his reference to land titles and sale agreements.

I am not persuaded by the respondent's argument that 1st applicant's sureties are not suitable to stand as sureties owing to the fact that they are friends and not blood relatives, younger than the applicants and therefore are not able to execute the duties of sureties. The 1st applicant's sureties are his close friends and leaders in a political party of which the 1st applicant is a member. By virtue of their position as close friends of the 1st applicant and leaders in a common political party, they are able to exert influence over the applicant to ensure that he abides by his bail terms in the event that he is released on bail, the fact they are younger than the 1st applicant notwithstanding. Reference to age in the Bail Guidelines as a parameter for determining suitability of a surety does not indicate that the surety must be necessarily older than the applicant. It is enough that the surety is a responsible adult with a connection to the applicant capable of exerting influence on the applicant to comply with his bail terms. In the premises, I find the 1st applicant's sureties substantial sureties capable of exercising authority over the 1st applicant to ensure that he abides by the conditions of bail in the event that he is granted bail.

The 2nd applicant's relationship to his sureties as husband, father and brother respectively, the fact of their being younger than the applicant notwithstanding, in my view augments their ability to compel him to comply with his bail conditions in the event that he is granted bail.

It is enough that the sureties provided copies of their national identity cards and introduction letters from the Local Council Chairpersons of the areas where the sureties are ordinarily residents, as set out in **Paragraph 15**

(2) (a) and (b) of The Constitution (Bail Guidelines For Courts of Judicature) (Practice) Directions, 2022. The aforementioned guidelines do not provide guidance on the format the introduction letter should take and what it must state. Neither do they make reference to permanency of residence in terms of owning property as alluded to the respondent by his reference to land titles and sale agreements. Accordingly, the declared relationship between the sureties as close friends presented by the 1st applicant augments their suitability as sureties. Also, the declared blood relationships between the 2nd applicant and his 2nd and 3rd sureties and the relationship of the 1st surety as the wife of the 2nd applicant augments their suitability as sureties.

Although as one of the factors to consider in determining the suitability of sureties, the Bail Guidelines mention age, it does not in my view indicate that a surety must always be older than the applicant. It is enough that the sureties are adults in positions of responsibility or as so connected to the applicant that they are able to exert pressure on the applicant to comply with their bail conditions if granted bail. To say that a surety must always be older than the applicant is to set a dangerous precedent where senior citizens of very advanced age may never be able to find sureties who are older than them. I therefore find that the 1st and 2nd applicants have satisfied the requirement to present substantial sureties.

Exceptional circumstances

It is settled law that existence of exceptional circumstances is no longer mandatory for bail to be granted as bail can be granted even where there are no exceptional circumstances exist. **Uganda vs. Rtd. Col. Dr. Kiiza Besigye** Supra, that proof of exceptional circumstances in an application for bail is not mandatory.

In this application for bail, however, the 1st and 2nd applicants rely on the advanced age as their exceptional circumstances. Section 16(3)(c) of the Trial on Indictments Act provides that; "exceptional circumstances" include the infancy or advanced age.

There is no doubt that the applicants at 68 years and 65 years old respectively are of advanced age. The applicants have succeeded in proving exceptional circumstances in the context of section 16 (3) (c) of the Trial on Indictments Act.

In this case, the applicants have proved that they; have a fixed place of abode, substantial sureties, are of advanced age, both applicants have not been found guilty of any offence previously, while the 1st applicant has charges pending against him at Buganda Road Court, the 2nd applicant has no other charges pending against him. The 1st applicant was released on bail in respect of the charges pending against him at Buganda Road Chief Magistrate's Court. My interpretation of the "other changes" against an applicant does not extend to charges in respect of which the applicant was released on bail and it has not been proven that before he had deliberately or for no justifiable reason failed to abide by his bail terms.

Gravity of the offence, nature of the offence and possibility of delay of commencement of the trial

Counsel for the applicants cited the case of **Makokha Samuel and 35 others-vs- Uganda Criminal Application No. 24 of 2024** where the applicants were granted bail while being charged with terrorism contrary to section 6(1) (b) and (2) (b) of the Anti Terrorism Act Cap 120.

It was submitted for the respondent that the applicants in the case of **Makokha Samuel and 35 others-vs-Uganda (supra)** are charged with terrorism which attracts life imprisonment on conviction, while the applicants in the present case are charged with treason which attracts the sentence of death upon conviction.

I am persuaded that on the scale of gravity, the charges against the applicants in this case attract the ultimate penalty and therefore are graver than the charges against the applicants in the case of **Makokha Samuel and 35 Others—vs- Uganda (supra)**. While the charges in both cases are grave the charges in the present application are more serious.

Counsel for the applicants stated that the International Crimes Division (ICD) of the High Court held in granting the applicants bail in the Makokha case stated that " despite the gravity of the allegations against the applicants, this court must determine whether sufficient evidence is presented to indicate the guilt or innocence of the applicants." In that case the prosecution stated in their affidavit in opposition of the application that there was sufficient evidence against the applicants. In the present application, the respondent has stated that investigations are still on going and has not made any assertions about sufficiency of the evidence against the applicants basing on the evidence so far adduced . This court is therefore unable to make a determination on the sufficiency of evidence pointing to the guilt or innocence of the applicants. In **Uganda (DPP)-vs-Col. (Rtd) Dr. Kizza Besigye Constitutional Reference NO. 20 of 2005**, it was stated that in relation to bail that "The extent to which evidence is pointing to proof of guilt or innocence of the applicant would seem to be one of degree in the circumstances of a particular case."

Counsel for the applicants submitted that, no evidence has been adduced in support of the averments that the offence impacts on the national security of Uganda. It was added that, the investigators have placed nothing before this court to suggest that there is evidence of any nature at all to suggest what they aver. In their response to this point, counsel for the respondent submitted that the charges with which the applicants are charged, treason, involves violent change of government. I am inclined to side with the respondent that treason, being an offence that involves overthrowing government, which act is accompanied by violence, an act of treason impacts on the national security of Uganda.

Possibility of interfering with investigations and witnesses:

It was submitted for the applicant that there is no likelihood of the applicants interfering with witnesses. Counsel for the applicants cited **Panju-vs-R (1973) EA 282** where it was held that allegations of interference with witnesses must be substantiated and that such substantiation is not difficult to show.

In reply, counsel for the respondent submitted that the 1st applicant is a prominent and influential person and the 2nd applicant is his personal assistant. That releasing them on bail will accord them the opportunity to interfere with witnesses and investigations which are still on going. Counsel for the respondent relied on the case of **Okello Augustine-vs- Uganda CR-CM 0006 of 2012** where the court emphasized that once the likelihood of abscondment and interference with the investigations has been established, the courts should be hesitant to grant bail.

in this case, the respondents state that the applicants are very influential people with the ability to interfere with investigations. Although the respondent has not gone ahead to state in detail how the applicants are likely to interfere with the investigations which are ongoing, the particular circumstances of the case against the applicants must be borne in mind. The offences are said to have been committed in various jurisdictions and the charges are extremely grave. I agree with the respondent that the applicants are very influential people with the wherewithal to interfere with the investigations which are still ongoing.

(ii) Decision

The main considerations for release of an accused person on bail are the right to liberty and the presumption of innocence.

Article 23 (1) (a) of the Constitution provides that no person shall be deprived of person liberty except; "in execution of the sentence or order of a court, whether established for Uganda or another country or of an international court or tribunal in respect of a criminal offence of which that person has been convicted, or of an order of court punishing the person for contempt of court.

Article 28 (3) (a) of the Constitution provides that " every person who is charged with a criminal offence shall be presumed to be innocent until proven guilty or until that person has pleaded guilty.

Article 23 (6) (a) of the Constitution in recognition of the fact that liberty may be curtailed even where a sentence or order of the court is pending provides that;

"where a person is arrested in respect of a criminal offence, 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."

Article 23 (6) (a) of the Constitution entitles accused persons to apply to court to be released on bail. It is clear from Article 23 (6) (a) of the Constitution that accused persons, irrespective of the gravity of the offence are entitled to apply to be released on bail. However, the discretion remains with the court to grant or reject the application for bail. **(See. Uganda (DPP)-vs-Col. (Col. Rtd. Dr. Kizza Besigye Constitutional Reference NO. 20 of 2005**

Among the considerations for the exercise of court's discretion is the gravity of the offence. Courts will more readily grant bail for less serious offences than for serious offences. The offence with which the applicants are charged are among the gravest if not the gravest offences on our statute books. In all cases where applicants are charged with a capital offence, the court must always have in its mind the overarching consideration of the gravity of the accusation against the applicants and the sentence that the attracts.

As stated in the case of case of **Okello Augustine-vs- Uganda Cr. Misc Appl No. 006 of 2012**, while the acknowledging that release of an accused person on bail is premised on the right to liberty, ..." there should



be peace and safety of the people and their property. The court of law and all other organs of government have a duty to ensure that national and international security is preserved. Therefore, the fundamental rights of the individual must be balanced with this greater public interest. In this regard, court has to consider whether there is justification to interfere with the accused person's right to liberty pending his/her trial. "

The circumstances of the present case are that, it is alleged that the offences were committed by the accused persons in various jurisdictions including, Kenya, Greece, Belgium and Netherlands with other persons still at large. The investigations into the charges against the applicants have not been concluded. By the fact that the offences are alleged to have been committed in various jurisdictions, investigations are unlikely to be wrapped up as speedily as investigations in respect of offences alleged to be committed only in Uganda. It was argued for the applicants that their continued incarceration while investigations which do not have a clear timeline of conclusion are ongoing is prejudicial to them as it is not clear when the investigations will conclude to facilitate the committing of the applicants for trial to the High Court. Counsel for the applicants stated that there will therefore be substantial delay in commencing the trial.

Article 23 (6) (c) of the Constitution provides that where a person is arrested in respect of a criminal offence triable only by the High Court, such a person shall be released on bail on such conditions as the court considers reasonable, if the person has been remanded in custody for one hundred and eighty days before the case is committed to the High Court. I am of the opinion that, this provision takes into account circumstances, like the circumstances of this case, where for one reason or another, investigations cannot be concluded speedily and provides a cap on the time on remand without committal beyond which time the accused person shall be mandatorily released on bail, to safe guard against the right of the accused person to liberty being indefinitely curtailed.

Where applicants for bail have not yet clocked mandatory bail period, bail is a matter of the court's discretion as provided under Article 23 (6) (a). (See **Uganda (DPP)-vs-Col. (Col. Rtd. Dr. Kizza Besigye Supra.)**)

In this case, the applicants have among other factors proved they; have fixed places of abode, have substantial sureties, are of advanced age and are first time offenders since they have never been convicted of any criminal offence. It has also not been proved that on a previous occasion when granted bail, the applicants did not abide by the bail conditions. While the 1st applicant has charges pending against him at Buganda Road court for which he was released on bail the 2nd applicant has no charges pending against him.

As stated in **John Muhanguzi Kashaka-vs- Uganda- Supreme Court Miscellaneous Application No. 18 of 2023**, all factors to a bail applicant's credit including being a first time offender, being of advanced age, having a fixed place of abode, recede to the background when weighed against the seriousness of the offence.

In **Yang Zheng Jun vs Uganda Court of Appeal of Uganda Miscellaneous Application 99 of 2013** it was stated that, "the granting of bail by court to one before court is essentially an act of the exercise by court of its

discretionary powers. The court considers all that is before it regarding the application for bail and reaches a decision based on the rules of reason, justice and law."

Therefore, although, I find that the applicants have satisfied all the relevant requirements for grant of bail such as proving that; they have fixed places of abode, have substantial sureties, are first time offenders with no criminal record and are of advanced age, the application for bail is denied for the following reasons;

(i) The charges against the applicants are amongst the gravest if not the gravest on our statute books, the offences are alleged to have been committed in various locations in Uganda and in other countries requiring more time and resources to conclude investigations than is normally the case in offences alleged to have been committed only in Uganda.

(2) Owing to the fact that the investigations are ongoing, the interests of justice at this point dictate that the application for bail is denied on this occasion because there is the likelihood that the applicants if released on bail while investigations are ongoing, owing to the grave nature of the offence may fall prey to the temptation to interfere with the investigations.



Rosette Comfort Kania

Judge

11th April 2025.