

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CRIMINAL DIVISION**  
**MISCELLANEOUS APPLICATION NO.052 OF 2024**  
**ARISING FROM CRIMINAL SESSION CASE NO.0100 OF 2024**  
**MOLLY KATANGA** **APPLICANT**  
**VERSUS**  
**UGANDA** **RESPONDENT**  
**BEFORE HON: JUSTICE ISAAC MUWATA**

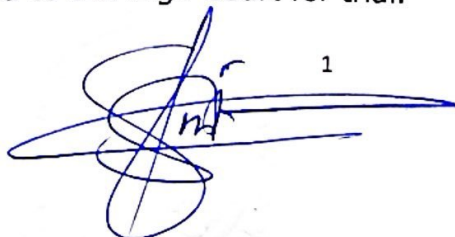
**RULING**

This is application for bail is brought under article 23(6)(a), (c), and 28(3)(a) of the 1995 Constitution of the Republic of Uganda, Section 14 of the Trial on Indictment Act Cap 23, Rules 2,12,13 & 14 of the Constitution (Bail Guidelines for Courts of Judicature (Practice) (Directions 2022. The application seeks the following order:

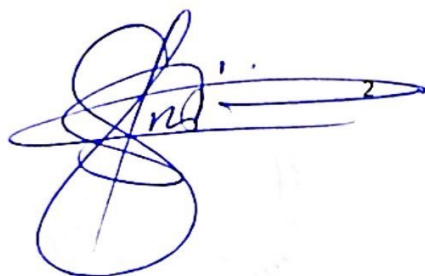
- 1. That the applicant/ accused person is granted bail pending the hearing and disposal of Criminal Case No.0100 of 2024.**

The grounds of the application are contained in the affidavit of the applicant and briefly are that-

- a) The applicant is charged with the offence of murder of her late husband Henry Katanga, contrary to section 188 & 189 of the Penal Code Act.
- b) The applicant is entitled to the constitutional presumption of innocence until proven otherwise.
- c) On the 24<sup>th</sup> January 2024, the applicant was arraigned before the Chief Magistrates Court of Nakawa at Nakawa and on the same day she was committed to the High Court for trial.

  
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- d) Prior to being committed to the High Court and to her being remanded to Luzira Women's prison, the applicant had spent over two months at C-Care IHK Hospital where she was receiving specialized treatment and underwent 5 major surgeries to her scalp and her hands to address the injuries she sustained on the 2<sup>nd</sup> of November 2023
- e) The applicant's physical condition is still frail due to the injuries she sustained and is still suffering from post-traumatic stress disorder, hypertension, vertigo and breast fibrocystic disease. As such, the applicant requires regular access to specialized treatment and supervision
- f) The applicant is of advanced age (55 years) and requires specialized medical care due to her current medical condition
- g) The applicant has substantial sureties that will ensure her court attendance at all material times as well as her compliance with the bail terms that shall be set by this honorable court
- h) The applicant has at all material times been a law abiding citizen and has never been charged and/or convicted of any criminal offence.
- i) The applicant has a fixed place of abode at Mbuya 1, Mbuya Hill Village, Nakawa-Division, Kampala District within the jurisdiction of this honorable court and shall not abscond once released on bail
- j) The applicant is gainfully employed, is the sole breadwinner of her family and the mother of a child of tender years who is totally dependent on her
- k) The applicant will not interfere with the prosecution witnesses.

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The application is further supported by the main affidavit of the applicant which restates the grounds of the application in detail. I shall not reproduce it

The respondent opposed the application through an affidavit deposed by D/ASP Akongo Bibiana. It is their contention;

- a) That the hearing date for the main case has already been fixed for 2<sup>nd</sup> July 2024.
- b) That during the applicant's stay at C-Care IHK Hospital, she was under a private arrangement for protection by officers of the Special Forces Command attached to Geoffrey Kamuntu that impeded/obstructed police investigations and made it difficult for police to access the applicant.
- c) That the said Geoffrey Kamuntu who is being presented as a surety in this application is under investigations for obstructing the police from doing their lawful duty in relation to this matter.
- d) That by the time the applicant was arraigned in court, she had been fully discharged from hospital.
- e) That the applicant has previously shown by her conduct that she is incapable of honoring court process having dishonored court summons issued in the presence of her lawyers.
- f) That the applicant only appeared in court upon arrest following a warrant of arrest issued by the Chief Magistrates Court of Nakawa.

The applicant also filed two affidavits in rejoinder whose averments were challenged by way of preliminary objections raised by the respondent during the hearing of the application I will first consider them. The parties also filed





written submissions which are on record and will not be reproduced here but shall be referred to in determining this application.

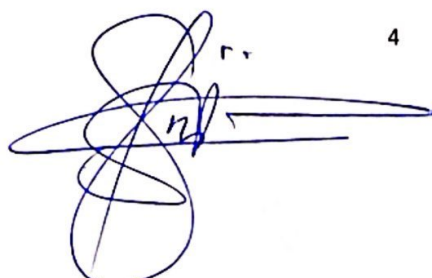
### **Preliminary Objections**

The respondents raised preliminary objections in respect of the affidavits in rejoinder deposed by a one Kamuntu Geoffrey and another by Augustine Obilil Idoot. It is the contention of the respondent that some of the averments contained in these respective affidavits offend the law applicable to affidavits set out under Order 19 Rule 3 of the Civil Procedure Rules. That they are argumentative, contain hearsay, narrative, conjecture, and are prolix. It is also contended by the respondent that some averments contain false hoods and are incurably defective. He cited the case of **Male.H.Mabirizi K Kiwanuka V Attorney General Supreme Court Misc. Application No.7 of 2018** to support his arguments.

The respondent referred to paragraph 5, 7,8, 10,11,12,15 of the affidavit in rejoinder deposed by Geoffrey Kamuntu and paragraph 3(a) to (b) of the affidavit in rejoinder sworn by Augustine Obilil Idoot.

I have carefully considered the preliminary objections by the respondent and counsel's submissions for and against the same, guided by the cited authorities and the relevant law.

The applicable law relating to affidavits is Order 19 rule 3 of the Civil Procedure Rules. It provides matters to which affidavits should be confined as **'to such facts as the deponent is able of his own knowledge to prove, provided that in interlocutory proceedings, or by leave of the court, an affidavit may contain statements of information and belief showing the sources and grounds thereof.'** Further order 19 rule 3(2) provides that the costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter or copies of or extracts



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from documents, shall, unless the court otherwise directs, be paid by the party filing the same.

In dealing with affidavits of this nature where the deponents are neither witnesses or accused persons, it is important to consider the context of the averments before reaching the conclusion that an affidavit is argumentative or prolix.

In this particular I have considered the context of the impugned averments, they are basically a response to the averments contained in the affidavit in opposition of the bail. They are specific averments made and are relevant for purposes of pleading and are also within the knowledge of the deponent.

A case in point is the paragraph in relation to an agreement allegedly executed by the applicant's family, the police and C-Care IHK Hospital with regard to who could access the applicant. The document bears the names of the persons in attendance. The document is also bears the stamp of the Director Health Services IHK and is dated 21<sup>st</sup> November 2023 and is signed by Dr. Kavuma. It is therefore clear that this document was authored by the hospital and was executed in the presence of all concerned parties.

The respondent also referred to paragraph 10 of Geoffrey Kamuntu affidavit in rejoinder. He contends that it is argumentative, is a narrative, prolix and is therefore inadmissible. The paragraph refers to an incident where the deponent was allegedly put on gun point for taking pictures of the police officers at the theatre. I have looked at the impugned paragraph and I find that it is not argumentative, it a response to averment 3(e) of the affidavit in reply.

I have also considered the other impugned paragraphs and I find that they are a response to the assertions contained in the affidavit in opposition of the application which itself is a source of the impugned assertions.





## **Merits of the application**

The law applicable to bail was laid out in the case of **Uganda (DPP) Vs. Col (RTD) Dr. Kiiza Besigye, Constitution reference No. 20 of 2005.**

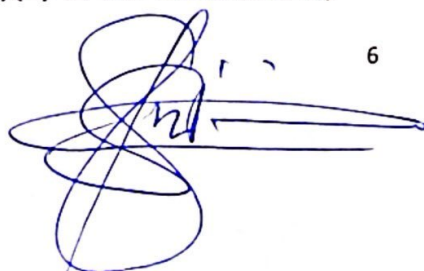
It was held that an accused person has the right to apply to court to be released on bail and the court has the discretion whether or not to grant bail. The same is emphasized under Article 23 (6) (a) of the Constitution of Uganda, 1995 which provides that the person is entitled to apply to the court to be released on bail and the court may grant that person bail on such conditions as the court considers reasonable.

While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact it has on the society and the interests of justice. The courts discretion in weighing these interests upon specific facts and circumstances of the case becomes crucial. The court must therefore strike a balance between the two.

In **Moaza Kromar vs. Uganda Criminal Division Misc. Application No. 25 of 2017**, the court observed that whereas Article 23(6) of the Constitution of Uganda provides that a person whose liberty has been deprived by imprisonment before trial or when not serving a sentence be free to apply for bail, the court must give adequate and appropriate consideration to the rights of the applicant, the respondent and the society as a whole while exercising its discretion.

Rule 5 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 also provides that the court shall, in considering a bail application, be guided by the following principles as enshrined in the Constitution—

- (a) the right of an applicant to be presumed innocent as provided for in article 28(3)(a) of the Constitution;

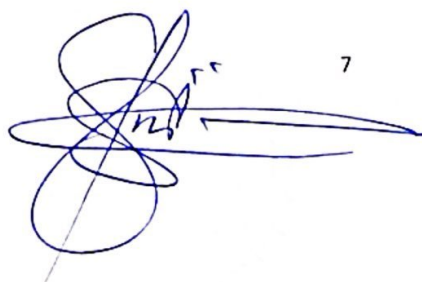
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- (b) the applicant's right to liberty as provided for in article 23 of the Constitution;
- (c) the applicant's obligation to attend trial;
- (d) the discretion of court to grant bail on such terms and conditions as the court considers reasonable; and
- (e) the need to balance the rights of the applicant and the interests of justice. **See: Rule 5 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022.**

Furthermore, Section 15(1)(a) of the Trial on Indictment Act provides for other considerations such as proof of exceptional circumstances which include infancy, advanced age, grave illness, and a certificate of no objection from the Director of Public Prosecutions.

Although it is no longer mandatory for an accused person to prove exceptional circumstances, an accused person who establishes exceptional circumstances stands a better chance of being granted bail if he or she can satisfy the court that they will not abscond or prejudice the administration of justice if granted bail. **See: Nyanzi Yusuf Siraj Vs Uganda Criminal Misc. Appl. No. 134 of 2021**

It is the contention of the applicant that her physical condition is still frail due to the injuries sustained and that she's still suffering from Post-Traumatic Stress disorder, hypertension, vertigo and breast fibrocystic disease and as such she requires regular access to specialized treatment and supervision. The applicant also contends that she's of advanced age (55 years) and requires specialized medical care due to her current medical condition. It is contended by the applicant that her condition demonstrates or proves existence of exceptional circumstances.

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The Respondent on the other hand strongly contested the fact that the applicant's condition cannot be managed by the Prison Authorities. It was submitted that the prison authorities did not issue any report to certify that the applicant's condition cannot be managed in the Prison's medical facilities.

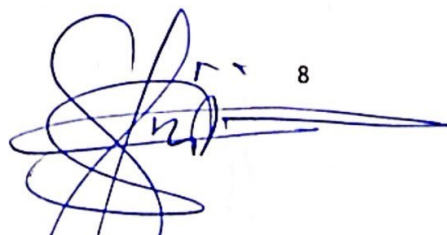
Section 15(3)(a)(b)(c) of the Trial on Indictment Act defines what ***exceptional circumstances*** means

1. Grave illness certified by a medical officer of the prison or other institution or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody.
2. A certificate of no objection signed by the Director of Public Prosecutions; or The infancy or advanced age of the accused.

From the reading of section 15(3)(a) of the Trial on Indictment Act, the only medical officer who is authorized to examine an accused person for purposes of securing bail under exceptional circumstances is a medical officer of the prison or place where the accused person is detained. **See: Onebe Francis V Uganda HCMA No.222 of 2021**

Section 15 (3) (a) of the Trial on Indictment Act defines grave illness as such illness that is incapable of adequate medical treatment in prison. In determining whether an illness is grave the court must be satisfied that the prison's medical facilities are incapable of treating or managing the accused's illness with positive outcomes consistent with existing medical standards.

The first report in relation to the applicant's condition is marked annexure A1 and is signed by a one Dr. Patrick Sekimpi. It is dated 13<sup>th</sup> November 2023. The other report on record is as of 3<sup>rd</sup> January and is signed by a one Dr. Joel Kiryabwire. All these reports are from C-Care IHK Hospital. The purpose of the above reports was to assess the applicant's ability to record





a statement as shown by the correspondences. The other report on record is a discharge summary and is dated 24<sup>th</sup> January 2024.

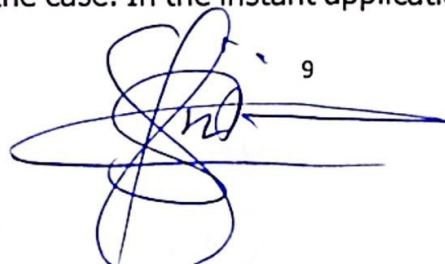
There is also evidence that the applicants counsel requested for a comprehensive medical examination of the applicant by the prisons authorities for purposes of applying for bail and the prisons responded by forwarding the matter to Mulago Referral Hospital. Indeed, the examination was carried out by a team of specialists from Mulago Hospital. The said report is dated 8/02/2024.

While the report contains various observations with respect to her health and condition, it falls short of stating whether the condition cannot be managed in prisons. The law is very clear, the only medical officer who is authorized to examine an accused person for purposes of securing bail under exceptional circumstances is a medical officer of the prison or place where the accused person is detained.

Further that medical officer must certify that the condition of the accused person cannot be managed in prison. I have perused all the medical reports on record and there is no such evidence. Accordingly, in the absence of any certification from the prisons that her condition is grave and cannot be managed while she's in prison, this ground cannot not succeed.

On the question of advanced age, "*advanced age*" means a person who is 60 years of age and above. **See: Rule 4 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022.** The applicants age is stated to be 55 years of age, as per the rules, it cannot be said that she's of advanced age.

It is important to consider whether it's in the interests of justice to grant the application. The court must weigh the gravity of the alleged offence and all other factors of the case. In the instant application, the applicant has already



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been committed for trial, the matter has also already been fixed for trial. The court does not also envisage any likelihood delay.

Though the sureties in this case appeared substantial, the above findings dispense with the need for them in the matter.

Having considered all the circumstances of this case and in view of all the foregoing, it is my considered view that the application for bail is denied. The ends of justice would instead be best served by hearing the main case. Accordingly, the application for bail is dismissed. Since the main case has already been fixed for trial, the parties are advised to prepare for the trial.

I so find

**JUDGE**



**9/04/2024**