

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
CRIMINAL MISC. APPLICATION NO. 025 OF 2025
(ARISING OUT OF CRIMINAL CASE NO.
CR-039 OF 2024)

NKURUNZIZA ELIAS :::::::::::::::::::: APPLICANT

VERSUS

UGANDA RESPONDENT

BEFORE: HON. JUSTICE KAROLI LWANGA SSEMOGERERE

RULING ON BAIL

Introduction:

(1) Nkurunziza Elias (“Applicant”) is the one of three accused persons, charged in this court with a capital offence, murder contrary to **Sections 171 and 172 of the Penal Code Act, Cap 128.**

(2)The accused is charged with the murder of Kajura Benon on the 4th day of October 2024. The charge sheet has 2 other co-accused persons.

Grounds of the Application:

The grounds of the application are contained in a Notice of Motion filed with this Honourable Court on June 17st, 2025. The motion notices the following legal provisions namely a constitutional right to bail; under **Articles 28(3)(a) and 23(3)(6)(a) of the Constitution of the Republic of**

5 **Uganda, Sections 14 and 15 of the Trial on Indictment Act, Cap 25 and Rules 2 and 4 of the Judicature (Criminal Procedure) (Application Rules) 5-1 13-8.**

The grounds relevant to this application are:

1. Applicant has a constitutional right to apply for bail;
2. Applicant has exceptional circumstances which require him to be
10 released on bail pending his trial.
3. Applicant has sound and substantial sureties.
4. Applicant has a fixed place of abode at Kateriteri Cell, Kagunga Parish,
Bukimbiri Sub-County, Kisoro district. and
5. That it is fair and just and in the interests of justice that the Applicant
15 be released on bail pending his trial.

Representation:

The application was filed on June 17th, 2025 and argued before this
honourable court on July 11th, and July 14th 2025. Applicant was
represented by Ms. Agnes Natukunda of M/S Orchid & Co Advocates for
20 the applicant while Ms. Noerine Naggayi, State Attorney, appeared for the
respondent, the Directorate of Public Prosecutions.

Oral Argument:

At the oral argument, parties briefed court on their respective positions.
25 Court directed parties to file written submissions, which they did. At the July
11th, 2025 hearing, respondent filed written submissions opposing the
application, and attached a request objecting to the bail application by the
widow of the deceased Provia Mukeshimana who wasn't able to attend
court. Applicant filed final submissions in rejoinder on July 15th, 2025.

30 I note that applications for bail are of necessity a priority for this court for
purposes of hearing and disposal. The reasons for the promptness of this
court is that they touch on fundamental human rights provided for and
guaranteed by our Constitution. They must be entertained without any
delay.

Discussion and Analysis:

Applicant substantiated his application by a duly sworn affidavit. He acknowledges being charged with murder on June 12, 2025 and remanded to Kisoro prison in Paragraph 5.

10 Applicant states he is of advanced age, and unable to wait for trial from prison. Applicant expressed willingness to present substantial sureties. On the first hearing date, on July 11th, 2025, only of the three sureties raised was found suitable; this was Mr. Bashija Enos, Chairperson LC III, Bukimbiri Sub-County, Kisoro district. Applicant later raised two sureties in the place of the
15 two he had proposed, that court had rejected. These are Ahimbisibwe Gad, a businessman raised on July 11th, 2026 and Kageyo Fred, Head Teacher, Rubarama Primary School, Kisoro, raised on July 14th, 2025.

Further averments in his affidavit in paragraphs 10,11, and 12 speak to the following, to the effect that advanced age was an exceptional circumstance,
20 warranting him to be released on bail, that he had never been convicted of any criminal offence in the past. Lastly, paragraphs, 16 and 17, speak to intention not to abscond, willingness to attend court when required until the case is completed.

Respondent opposed the application in an affidavit sworn by Nkwanzu
25 Racheal, State Attorney, Directorate Public Prosecutions. Respondent in paragraph 4, stated that the applicant was on the run, after committing the offence in October 2024, and it was only much later in June 2025, that he was rearrested, raising a likelihood that he would abscond if arrested. It is noted that applicant was arrested and charged, upon rearrest on June 12,
30 2025.

There was no affidavit in rejoinder.

Applicant's counsel framed one issue for determination by this court. This issue is what **whether the applicant presents exceptional circumstances to be granted bail.**

35 The other issues, substantiality of the sureties and fixed place of abode by the applicant are administrative. Court is satisfied with the sureties

5 presented, and the respondent did not contest the particulars of abode of the applicant. But first, it is important to understand the constitutional right to bail, especially in so far as it applies to the accused.

The right to bail provided for in Article 23(6)(a) of the Constitution provides as follows:

10 “Where a person is arrested in respect of a criminal offence, he or she is entitled to apply to court to be released on bail, and court may grant that person bail on such conditions as the court considers reasonable.”

15 The right to bail is also predicated on the constitutional presumption of innocence provided for in Article 28(3)(a) of the Constitution which provides as follows:

“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.”

20 This court has had the opportunity to comment on the presumption of innocence in **Valentino Agaba Baribuhe v Uganda, 2025 UGHC 271**.

25 “The presumption of innocence is one of the bedrocks of our criminal justice system, and is also based on **Article 11(1)** of the **Universal Declaration of Human Rights** and **Article 14(2)** of the **International Covenant on Civil and Political Rights**. Uganda is a party to these two international conventions. This is the position of the law in Uganda, see *Omiat Patrick v Uganda, Criminal Miscellaneous Application No. 071 of 2024*, decided by Wamala B., J in the High Court of Uganda at Soroti on April 14, 2025.”

30 Discretionary bail is couched in the expression, “may grant bail.” I now turn to resolution of the issue.

Whether the applicant presents exceptional circumstances to be granted bail?

5 Counsel for the applicant submitted that applicant is 62 years and 7 months old, and is therefore of advanced age. The age, is above the retirement age in Uganda, and therefore the description advanced, is not contested.

However, the grant of bail is subject to discretion of this court. Court has powers to grant bail under **Section 15(1) of the Trial on Indictments Act, Cap 25**, which provides:

10 “The High Court may at any stage in the proceedings release the accused person on bail, that is to say, on taking from him or her a recognizance consisting of a bond, with or without sureties, for such an amount as is reasonable in the circumstances of the case, to appear
15 before court on such a date and at such a time as is named in the bond.”

Court may also refuse to grant bail, by the considerations in exercise of court’s discretion in respect of any of the offences in **Section 16(2) of the Trial on Indictments Act, Cap 25** (hereinafter referred to as the “TIA”).
20 **Section 16(1)** states the grounds for denial of bail. The relevant provision states:

“..... court may refuse to grant bail to a person accused of an offence specified in sub-section (2) if he or she does not prove, to the satisfaction of court that:

- 25 (a) Exceptional circumstances exist justifying his or her release on bail; and
(b) That he or she will not abscond when released on bail.”

Section 16(2) (a) provides the relevant offences with which the applicant is charged. Murder is only triable by the High Court. In short, once a person is
30 charged with any such offence defined in **Section 16(2)** then the conditions in **Section 16(1)** of the TIA automatically apply. [Emphasis mine].

Section 16(3) of the TIA lists exceptional circumstances as any of the following [Emphasis added].

- 35 (a) Grave illness certified by a medical officer of the prison ...where the accused person is detained as incapable of adequate medical treatment while the accused is in custody;

- 5 (b) A certificate of no objection by the Director of Public Prosecutions;
or
(c) The infancy or advanced age of the accused.

10 In short, the position of the law is that these requirements of the statutory law of Uganda must be complied with. In the offence of murder, the offence, the accused person is charged with, the provisions of **Section 16(1), (2) and (3)** of the TIA are couched in mandatory terms. These are that exceptional circumstances required by **Section 16(1)** must exist justifying the grant of bail; and at least one of the three circumstances in Section 16(3) must be specifically pleaded in the application for the bail.

15 The judiciousness in the exercise of discretion of court to grant bail, which is the law of the land enunciated in the Supreme Court's decision in *Nakiwugge Rachel Muleke v Uganda Criminal Reference No. 12 of 2020* must be met.

20 In the instant case, paragraph 4 of the respondent's affidavit in reply points to the accused as a flight risk who had fled from justice. It has the effect of advising court to the actual risk in granting the accused bail, that invokes **Section 16(1)(b) of the Trial on Indictments Act, Cap 25**. This paragraph in evidence was uncontroverted by the applicant. In short, it is true.

25 Once any of the conditions in **Section 16(1), (2) and (3) of the Trial on Indictments Act, Cap 25** are not met, the application for bail will be denied as a matter of law. The provisions must be read together.

The **Constitution (Bail Guidelines for Courts of Judicature) (Practice Directions), 2022**, guide court to consider the following factors in the grant of bail. These are:

- 30 a) *Gravity of the offence*
b) *Nature of the offence.*
c) *Possibility of a substantial delay in trial.*
d) *Likelihood that the applicant may commit an offence on bail.*
e) *Likelihood of the applicant interfering with witnesses.*
35 f) *Safety of the applicant, the community and the complainants.*

5 I have noted the widow's request objecting to bail. I decline to give it much weight, as it wasn't in the form of sworn testimony. Secondly, she did not attend court where court would have had an opportunity to hear directly her concerns. Applicant's submissions in rejoinder address it, but these must take into account the whole import of guideline (f), i.e., "safety of the
10 applicant, the community and the complainants. The sentence must be read as a whole, not in severable parts. In short, the feeling of insecurity by any of the (3) stated is also sufficient to deny bail.

Comment:

15 It is important for both applicants and the prosecution to carefully evaluate the detailed legal framework governing bail. Applicants have a constitutional right to bail, whether discretionary or mandatory bail. However, the interests of the public also exist, and may countermand this right, and derogation from this right is established by long standing laws of Uganda and further by the **Constitution (Bail Guidelines for Courts of
20 Judicature) (Practice Directions), 2022.**

Applicant's submissions in rejoinder were a direct contestation of the widow's genuine interest in seeking justice, and protecting the vulnerable in society. The LC letter with all signatories supporting the release of the accused on bail should at a minimum have had a consultation, or
25 engagement with the widow in its preface. The Local Council system, a product of our turbulent past is the foundation stone of our legal system, and must espouse all values of good citizenship, good neighborliness and compassion.

Findings and Conclusion:

This is an application for discretionary bail. Exceptional circumstances do exist, i.e. advanced age; 62 years old; under **Section 16(3)(c) of the Trial on Indictments Act, Cap 25.**

Applicant has not met the requirements for favorable exercise of the court's
35 discretion to grant bail, as the prosecution's uncontroverted evidence is to the effect the applicant is likely to abscond if granted bail.

5 This application is dismissed without prejudice to future applications.
Applicant should await placement of his case on session for hearing and
disposal.

10 I SO ORDER,

DATED AT KABALE THIS 18TH day of JULY, 2025,

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SSEMOGERERE, KAROLI LWANGA
JUDGE.

20 Ruling delivered in the presence of Ms. Noerine Naggayi for the Prosecution
and Mr. Ben Duncan Sande for the Applicant.