



bail, Court must be satisfied that the accused person will turn up to answer the charge at his trial or when he is required by Court with the above in mind I have carefully listened to both Counsel and perused all the documents and the authorities cited in support of this application.

Section 14 (1) of the T.I.D empowers this Honourable Court at any stage of the proceedings to release the Accused person on bail. However under Section 14A of the T.I.D. the Court may refuse to grant bail to a person accused of an offence specified in subsection (2) of this section, if he does not prove to the satisfaction of the Court:-

- (a) That exceptional circumstances exist justifying his release on bail, and
- (b) That he will not abscond when released on bail. Among the offence specified in Sub-Section (2) above is:-
- (c) Embezzlement Contrary to Section 257 of the penal code: and it is this offence that the Applicant is charged with Sub-Section (3) of the above Section defines “exceptional Circumstances” to mean any of the following:-
  - (a) Grave illness certified by a medical officer of the prison or other as other Institution or place, where the Accused is detained as being incapable of adequate Medical treatment while the Accused is in custody.

Indicating the exact date of birth deponed to b the Applicant’s parent or other person who know the Applicant’s date of birth to prove her age. I am alive to the fact that common sense and observation is a conclusive method of proof of age.

I must confess on the basis of my observation of the Applicant I was unable to determine whether the Applicant is anywhere near 50 years of age. In the circumstances I am unable to find that the Applicant qualify to be considered for bail on account of advanced age under Section 14A (c) of the Trial on Indictment Decree.

In paragraph 6 of the Applicant’s affidavit in support, the applicant avers that for a long time she has been suffering from Hypertension and has been attending to Doctor Lulema Micheal of Buziga Nsambya Clinic. The Accused’s grave illness is an exceptional circumstance under Section 14 A (3) (A) of the T.I.D. There are numerous authorities where this Honourable Court has found Hypertension such grave illness. However the Sub-Section requires that such grave illness must be certified by a medical officer of the prison, Institution or place where the Accused is in custody. According to paragraph 2 of the Applicant’s affidavit she is reminded in Fort Portal Government prison. There is no such certificate from the Medical officer of that prison.

I agree with Mr.Bwiruka Counsel for the Applicant that by the use of the word “may” in section 14A of the T.I.D it is therefore not mandatory that an Accused shall not be released because exceptional circumstances are not proved. See Mureeba Vs Uganda Misc.crim. Appl. No. 0136/1999. However I equally agree with Mr. Asiimwe that Court should exercise its

discretionary powers to grant bail judiciary. In the instant instant Applicant court would have been helped in this regard if the Applicant's treatment records from her alleged helped in this regard if the Applicant's treatment records from her alleged Doctor, referred to in paragraph 6 of her affidavit. Were availed to it, but were not. In the circumstances I am unable to find the Applicant qualifies to

- (a) A certificate of no objection signed by the Director of public prosecution. Or
- (b) The infancy or advanced age of the Accused.

The instant application is particularly made under Sub section (3) (c) of the Section, therefore the basic ground is advanced age since the Applicant is not an infant. In paragraph 4 of her affidavit, the Applicant avers that she is aged 52years. There is a long list of cases where this Honourable Court has held that the age of 50 and above may be regarded as advanced age for purposes of a bail application, of which I will just mention a few:-

See:- Erika Mutiiba Vs. Uganda

Misc. cim. Appl. No. 04 of 1992.

-Francis Ogwang Olebe Vs. Uganda

Misc. crim. Appl. No. 25 of 2003

-Andrea Adimola Vs. Uganda

Misc.crim Appl. No.9 of 1992

-Hon. Vicent Nyanzi Vs. Uganda

Misc. Crim. Appl. Appl. No.7 of 2001

Mr.J.B. Asiimwe, The Resident state Attorney, opposed the Application. With regard to the Applicant's age, he submitted that in both the Accused's plain statement recorded on the 24<sup>th</sup> September, 2003 and her charge and caution statement recorded on 25<sup>th</sup> September, 2003 at the police the Accused's age is stated to be 43 years old. The learned Counsel's submission was a statement from the bar, it ought to have been made on oath by way of an affidavit in reply. Where a fact is deponed to by affidavit and there is no opposing affidavit in reply. Where a fact is deponed to by affidavit and there is no opposing affidavit or the averment is not rebutted the presumption is that such averment is true. See Samwiri Massa vs Rose Achieng (1978) HCB 297. The above notwithstanding, under Section 100, 101 and 102 of the evidence Act, whoever alleges a fact is supposed to prove it. The burden of proof is upon the Applicant to adduce sufficient evidence to prove that she qualifies to be considered for bail on account of advanced age. The best evidence as to prove the age in the instant case would have been a birth certificate,

baptism certificate or in lieu thereof an affidavit be considered for bail on account of grave illness.

The applicant having failed to satisfy Court on the above two basic grounds, I do not find it appropriate at this stage to consider the other grounds with regards to the Applicant's sureties and the likeness to absorb if granted bail.

The Applicant's prayer for bail is hereby rejected. The Applicant is free to re-apply for bail if any of the above two grounds are satisfied.

Sgd: (LAMBOCK N. MUKASA)

AG. JUDGE.

5/11/2003