

time he/she is required to attend his or her trial. A surety has the principal duty of ensuring that the accused does not escape from justice. Therefore he/she has to ensure that the accused regularly appears in Court until the conclusion of the case.

What should a substantial surety possess?

For a person to be a surety in Court, they should possess the following:

- » An introduction letter from the LC I Chairman (RWC) of the area where they reside
- » A valid identity card (Refugee status card, family attestation card) indicating their place of work, business or residence, and in the alternative;
- » A passport or driving permit can also be used for identification
- » Letter of introduction from the Office of the Prime Minister (OPM)

Denial of Bail

In the event that bail is not granted, the Judicial Officer gives reasons for his/her decision and informs the accused person of his/her right to apply for bail in a higher Court.

If the application for bail has been heard and rejected by a Magistrate Grade I or II, the accused person can apply to the Chief Magistrate. A Chief Magistrate supervises other Magistrates of the rank below his/hers in the magisterial area under his/her control and is always the one who offers administrative remedies to aggrieved litigants. If the application for bail is heard and rejected by the Chief Magistrate, the accused person can then apply to the High Court, which may also grant or refuse to grant bail depending on the circumstances of each case.

Consequences of jumping bail

In the event that bail is granted, the accused person will be informed by the Court about his/her next appearance date. In the event that the accused does not appear in Court on the given date, a warrant of arrest will be issued out by Court for the accused person to be arrested again and upon arrest his/her bail will be cancelled and he/she will be remanded to prison.

If the bail granted was cash, the accused will forfeit that money to the State/Government.

If the surety did not inform Court of the accused's likelihood of

jumping bail, he is liable for disobeying lawful of orders and will be arrested and charged.

Discharge of a surety from liability:

A person who stood as surety for an accused person, may at any time, apply to Court to be discharged from that responsibility. This usually happens when the accused has failed/refused to return to Court to attend his/her trial. In order for the surety to avoid being arrested and charged, he or she should always apply to Court to be discharged.

When Court receives an application from the surety requesting to be discharged, it issues a warrant of arrest directing that the accused be re-arrested and brought to Court.

When the accused is re-arrested and brought before Court, the Magistrate will discharge the surety from his/her responsibility as a surety and shall ask the accused to present other sufficient/sound sureties.

If the accused does not have other sound sureties, he or she may committed/sent to prison.

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School of Law, Makerere University



BAIL IN UGANDA

What is bail?

Bail is the release of an accused person by Court either before trial or before conclusion of a case on condition that the released person will turn up for his or her trial whenever required.

Forms of bail

1. Cash bail

Bail granted with a monetary sum that the accused pays to Court and in the event that he/she does not return to Court to face trial (jumps bail), without a justified reason, he/she forfeits/loses that sum of money to the state/government and gets arrested again for not honoring the condition/promise he or she made to Court.

2. Non cash bail

Bail granted with a monetary sum that is not deposited in Court. However, if the accused person does not return to Court to face trial (jumps bail), without a good return, bail will be cancelled and he or she is arrested again.

3. Mandatory bail

Article 23(6)(b) and (c) of the Constitution gives the accused person the right to apply to be released on bail and if the person has been on remand for sixty (60) days, that is to say, two (2) months before trial begins in the Chief Magistrates Courts and one hundred and eighty days (180), that is to say, 6 months on remand before trial starts in respect of an offence only triable by the High Court, the accused person will be entitled to be released on mandatory bail-also known as Court bond or automatic bail.

Note

A Judicial officer may refuse to grant bail to an accused person even if he/she has completed the mandatory days on remand if;

- » The accused person is committed or referred to High Court for trial
- » The Judicial Officer believes that the release of the accused person is a threat to the public

Reasons for Bail

Bail is granted to an accused person because a person is presumed innocent until proven guilty in Court. This is provided for in Article 28 (3) (a) of the Constitution of the Republic of Uganda and in several Human Rights Instruments that Uganda is signatory to.

The essence of bail is that;

- » An accused person is innocent until proven guilty
- » An accused person is entitled to a speedy trial and should not be kept unnecessarily long in prison
- » An accused person should have enough time to prepare his/her defence effectively without being held in custody

Applying for Bail

An accused person is entitled to apply to Court to be released on bail at any stage of the proceedings before Court makes a judgment in the matter. Court may grant the accused bail on such conditions as it considers reasonable as provided for under Article 23 (6) of the 1995 Constitution of the Republic of Uganda.

The application can be by an accused person or his/her lawyer.

Note

- » An accused person has the right to APPLY for bail and NOT the right to bail. This means that granting bail to an accused person is not a must
- » It is within the Judicial Officer's discretion to determine whether or not the accused should be granted bail taking into account particular conditions and circumstances of the case

Conditions or factors for consideration by a Judicial Officer before granting bail

1. Bail in the High Court

The accused person must prove that there are;

- a) Exceptional circumstances existing to justify his or her release on bail. These exceptional circumstances include;
 - » Grave illness certified by a medical officer of prison or other institution or place
 - » A certificate of no objection signed by the Directorate of Public Prosecution and
 - » The infancy or advanced age of the accused

b) That he or she will not escape when released on bail and in considering whether or not the accused is likely to escape, the Court may take into account;

- » Whether the accused has a defined residence within the authority or territory of the Court or is ordinarily resident within Uganda.

- » Whether the accused has sound sureties within the authority of the Court to undertake that the accused shall comply with the conditions of his or her bail;
- » Whether the accused has on previous occasion when released on bail failed to comply with the conditions for his or her bail and
- » Whether there are other cases pending against the accused.

2. Bail in a Magistrate's Court

A Magistrate considers the following factors before granting bail;

- a. The nature of the offence or accusation against the accused. If it is a minor offence, there are high chances of granting that person bail.

b. The gravity of the offence and severity/harshness of the punishment which the offence may entail in case of a conviction. If the offence attracts a light punishment, then the Court will be more likely to grant the application. However, if it attracts a heavy sentence, then Court assumes that this may prompt the accused to disappear fearing the punishment.

c. The antecedents (background and character) of the accused so far as they are known. Court considers the general character and past conduct of the accused person. Where the accused person is a first offender, he/she stands higher chances of being granted bail.

d. Whether the accused has a fixed place of abode, which is a permanent residence or home within the territory and authority of the Court.

e. Whether the accused is likely to interfere with the witnesses of the complainant when released or any of the evidence to be brought against him or her in Court.

f. The age and health status of the accused person.

g. Whether the accused person has sound sureties.

General requirements

In both the High Court and Magistrates' Court, the accused is required to present a minimum of two sureties or more if the Court deems it fit.

Who is a surety?

A surety is a person who guarantees to Court that upon the grant of bail to an accused, the accused will return to Court every