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THE REPUBLIC OF UGANDA

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IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

**Miscellaneous Criminal Application No. 77 of 2019**

*(Arising from Court of Appeal Criminal Appeal No. 362 of 2017)*

**BETWEEN**

15 **RA/212885 HASSAN KAGENDE:..... APPLICANT**

**VERSUS**

**UGANDA:..... RESPONDENT**

**Coram: Hon. Mr. Justice Remmy Kasule, Ag. JA sitting as a  
single Justice**

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## **RULING OF THE COURT**

This ruling is in respect of an application for bail pending appeal  
25 lodged to this Court under **Article 23(6) (a) (d)** of the **Constitution**  
**of the Republic of Uganda, Section 40(2) of the Criminal**  
**Procedure Code Act and Rule 6(2) (a) of the Rules of this Court.**

**Background:**

The applicant, now aged 30 years, was charged and convicted of  
30 the offence of Aggravated robbery contrary to **Section 285** and  
**286 (2)** of the **Penal Code Act** and was sentenced to twelve (12)  
years imprisonment on the 27<sup>th</sup> September, 2017 by Hon. Lady  
Justice Basaza Wasswa Patricia in **Jinja High Court Criminal  
Session Case No. 362 of 2017** .

35 Dissatisfied with the Court’s Judgment, the applicant lodged an  
appeal to this Court vide **Criminal Appeal No. 362 of 2017**. He  
later lodged this application for bail pending appeal.

The application was supported by the applicant’s affidavit and was  
opposed by the respondent through an affidavit in reply by the  
40 learned Senior State Attorney, Nabulobi Annet, of the Office of the  
Director of Public Prosecutions (DPP), filed in this Court on 14<sup>th</sup>  
February, 2020.

At the hearing of the application, the applicant self –represented  
himself while the respondent was represented by the learned  
45 Assistant Director of Public Prosecutions (DPP) Nabisinde Vicky.  
The applicant indicated to Court that he was ready to argue the  
application on his own without being represented by a lawyer.

**Applicant’s Case:**

Before Court, the applicant prayed to be released on bail pending  
50 the disposal of his appeal on the grounds that; he was a military  
soldier who wanted to go back to his military work with the Uganda  
Peoples Defence Forces (UPDF). He also claimed to have got  
injuries while on military duty in Somalia and he prayed to get out

of prison so as to be medically treated and to be looked after by his  
55 relatives.

The applicant also contended that he was willing to abide by all  
the bail conditions that may be imposed by Court. Once his appeal  
is heard on its own merits, the chances were that the appeal would  
be allowed resulting in his acquittal of the offence he had been  
60 convicted of at trial. However, there is likely to be a delay in having  
the appeal disposed of by this Court. Hence his application to be  
released on bail in the meantime.

He prayed for the application to be allowed.

**Respondent's Case:**

65 Counsel for the respondent opposed the bail application on the  
grounds that the applicant had not shown how his appeal had  
chances of success. No memorandum of appeal had been filed on  
the Court record.

70 There was also no proof that the determination of his appeal had  
been delayed. The applicant was a convict of aggravated robbery,  
an offence that involved personal violence, and thus he ought not  
to be released on bail.

The applicant had also not proved that he had a fixed place of  
abode, and two of the sureties were his in laws who would have no  
75 control over him, as regards his compliance with the Court bail  
Conditions, once released on bail.

Counsel prayed for the application to be dismissed.

**Court's Consideration of the Application:**

This Court appreciates the position of the law to be that in an  
80 application for bail pending appeal, the applicant must satisfy  
Court, of the existence of exceptional circumstances and/ or  
unusual reasons as to why that applicant ought to be released on  
bail. This is because such an applicant no longer enjoys the  
presumption of innocence under **Article 28(3) (a) of the**  
85 **Constitution**. It is also the law that a Court conviction is deemed  
to be right until the contrary is proved. **See: Supreme Court**  
**Criminal Reference No. 01 of 2016: Busulwa Blasio Vs Uganda,**  
**and also: Court of Appeal Criminal Application: No. 208 of**  
**2018: Kamwana Daniel Vs Uganda.**

90 Some of the exceptional Circumstances or unusual reasons that  
the Court considers in an application for bail pending appeal are:  
where an appeal raises an important point of law as to the legality  
of the conviction of the appellant; or where the sentence is  
manifestly contestable as to whether or not it is a sentence known  
95 to the law; or where the applicant is likely to serve the entire or a  
substantial part of the sentence before the appeal is determined;  
or where, on the face of the record, there is a likelihood of the  
success of the appeal. See: **RAGHBIR SINGH LAMBA Vs R [1958]**  
**EA 337.**

100 The above are in contrast to the considerations for bail pending  
trial, when the applicant for bail still enjoys the presumption of  
innocence; and the Court may consider the nature of the charges  
against the applicant, severity of the punishment in case of  
conviction, the nature of evidence to be adduced and whether or

105 not the applicant will not interfere with the evidence or with the witnesses before the trial is concluded.

The applicant in this application has not established before this Court any points of law that can be said to indicate, prima facie, that the appeal has any likelihood of success. No memorandum of  
110 appeal was availed to this Court.

The fact that the applicant was a serving army soldier; and he claims to have got injuries on duty; and therefore wants to go for medical treatment, is a claim that is not backed up by any medical evidence. It is also not proved to this Court that the applicant  
115 cannot receive the necessary medical treatment if any, from and/or while in the prisons confinement, while serving his sentence for the offence he was convicted of. Further, the facts that the applicant's desires of going back to his Job, pursue his life and also stay with his relatives, do not constitute exceptional  
120 circumstances or unusual reasons for granting bail pending appeal. See: **Igamu Joanita v Uganda; Court of Appeal Criminal Application No. 154 of 2013.**

This Court also has doubt, as to whether the sureties are substantial enough. The two sureties are in-laws of the applicant,  
125 who are not likely to have influence or authority to control him, a military person.

It is also a fact that the offence, of which the applicant stands convicted of Aggravated Robbery, involved use of personal violence by the applicant at its commission. This is a consideration not  
130 favouring the applicant being released on bail.

The applicant has thus not proved to the satisfaction of this Court any exceptional circumstances and/ or unusual reasons for him to be granted bail pending appeal.

135 This Court therefore finds no merit in the Application. The same is dismissed.

The Registrar, Court of Appeal, is hereby directed to fix for hearing, **Criminal Appeal No. 362 of 2017**, in which the applicant is the appellant, at the earliest convenient Criminal Session of this Court, so that the same is disposed of on its own merits.

140 It is so ordered.

Dated at Kampala this .....<sup>3<sup>rd</sup></sup>.....day of.....<sup>March</sup>.....2020.

  
**Remmy Kasule**  
**Ag. Justice of Appeal**

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