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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.  
174 Of 2019**

*(Arising from Criminal Appeal No. 903 of 2014)*

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**Bukenya Muhammad:..... Applicant**

**versus**

**Uganda :.....Respondent**

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

**Ruling of the Court**

25 **Introduction**

This is an application for bail pending the hearing and determination of the applicant's appeal **Criminal Appeal No. 903 of 2014**. It is brought by way of Notice of Motion under **Rules 2**

(2), 6(2) and 43(1) and (2) and 53 (1) of the **Judicature (Court of Appeal Rules) Directions S.I. 13-10.**

### **Background**

The applicant, was convicted of the offence of Murder contrary to **section 188 and 189 of the Penal Code Act** and was sentenced to life imprisonment by **Hon Lady Justice Nahamya Ibanda** in **High Court Criminal Case No. 071 of 2014.**

Dissatisfied with the court's decision, the applicant lodged an appeal vide **Criminal Appeal No. 903 of 2014** to this Court, and later, this application for bail pending appeal.

### **Grounds of the application**

The grounds upon which the application is premised were stated in the Notice of Motion and laid out in detail in the affidavit in support of the application sworn by the applicant on 13<sup>th</sup> September 2019. In his affidavit, the applicant averred, *among other things*, thus:

***“2. That I was convicted of murder contrary to sections 188 and 189 of the Penal Code Act and subsequently sentenced to life imprisonment with criminal appeal No. 903 of 2014.***

***3. That being dissatisfied and aggrieved with the decision of the learned trial judge filed a notice of appeal and memorandum of appeal vide criminal appeal No. 903 of 2014.***

***4. That my appeal is not frivolous and has great chances of succeeding.***

5. *That am a male adult Ugandan, before my incarceration,*  
55 *I was residing with my family at Mutundwe Rubaga division*  
*in Kampala district (introduction letter of local council to be*  
*presented during hearing).*

6. *That I was charged with the offence of murder contrary*  
*to section 188 and 189 of the Penal Code Act which I denied*  
60 *upon plea taking.*

7. *That I was subsequently convicted on the said offence and*  
*accordingly sentenced to life imprisonment but no copy of*  
*proceedings and judgment were availed to me since then.*

8. *That being dissatisfied and aggrieved with the decision of*  
65 *the learned trial judge, I filed a notice of appeal and*  
*memorandum of appeal vide criminal appeal no. 903 of*  
*2014.*

9. *That I was informed by my lawyer which information I*  
*verily believe to be true that my appeal has merits and great*  
70 *chances of succeeding as the learned trial judge made*  
*“glaring errors of law” which cannot be let to stand by this*  
*honorable Court.*

10. *That there is a likelihood of further substantial delay*  
*before my appeal can be heard by this honorable Court as to*  
75 *date no attempt has been made to cause list me on any Court*  
*of Appeal sessions despite my relentless efforts to ensure the*  
*same.*

11. *That I have substantial sureties namely: Rehema*  
*Nabukeera(my sister) resident of Nalukolongo Zone;*

80 *Mutundwe Parish, Rubaga division in Kampala district, Senabulya Abdul Malik(my uncle) resident of Kitintale, Golombo sub county; Nakawa division in Kampala district, Takia Nalweyiso of Kanyogoga Village, Butende Parish, Ngando sub county in Butambala district. (Introduction*  
85 *letters and copies of National identity cards to be presented during hearing).*

*12. That I undertake to abide by all the conditions which this Honourable Court shall impose upon granting me bail pending appeal.*

90 *13. That I swear this affidavit in support of my application for release on bail pending the hearing and determination of my first appeal by this Honourable Court.” (SIC)*

**Affidavit in reply**

On 19<sup>th</sup> February, 2020, Learned Counsel Nabulobi Annet, an  
95 Acting Principal State Attorney from the office of the Director of Public Prosecutions, swore an affidavit in reply which was filed in the Court stating:

100 *“3. That I have read and understood the Notice of Motion and the grounds stated in the affidavit in support of the motion, and I swear this affidavit in opposition to the application for grant of bail pending determination of the Applicant’s Appeal.*

*4. That save for paragraphs 1,2,3,6 and 8 of the affidavit in support whose contents are not denied, the respondent denies*

105 ***the contents of the rest of the paragraphs and shall put the applicant to strict proof thereof.***

***5. That in response to paragraph 4,9 and 10, it is not true that the applicant's appeal has high chances of success since he was tried and convicted with murder c/s 188 and 189 of the Penal Code Act and sentenced to life imprisonment.***

***6. That in response to paragraph 11 and 12, of the affidavit in support of the application, it is not true that the applicant will not abscond once granted bail. There are high chances of him absconding knowing that he is now a convict and is serving a long custodial sentence of life imprisonment.***

***7. That in further response to paragraph 5, of the affidavit in support of the application, it is not true that the applicant has a fixed place of abode, no utility bills have been attached to show that, that is where he resides, no land title, no kibanja agreement attached to show that he owns the land where he stays. No LC1's letter attached to show his fixed place of abode.***

***8. That the offence of murder, for which he was convicted involved personal violence."***

125 **Representation**

At the hearing of the application, the applicant self –represented himself; while the respondent was represented by the learned State Attorney, Peter Mugisha from the office of Director of Public Prosecutions (DPP).

130 **The case for the applicant**

Before Court, the applicant prayed to be released on bail pending the disposal of his appeal on the grounds that; his appeal had taken long to be fixed for hearing since the date he secured the proceedings and judgment and as such he had over stayed in  
135 prison. He had already filed **Criminal Appeal No. 903 of 2019** on 10<sup>th</sup> December, 2019 in this Court.

He prayed for the application to be allowed.

**The case for the respondent**

Counsel for the respondent relying on the affidavit in reply,  
140 opposed the bail application. He contended that there were no exceptional circumstances proved, the applicant had no sureties and the offence of murder of which the applicant had been convicted involved personal violence.

Counsel relied on the decisions in **Supreme Court Criminal  
145 Application No.1 of 2003; Arvind Patel Vs Uganda** and **Court of Appeal Criminal Application No. 69 of 2018; Kitaka Robert Vs Uganda**, where it was held that prospects of success cannot be assessed by the Court without the applicant proving to Court the basis upon which he relies to assert that the appeal has prospects  
150 of success. The applicant had not discharged this burden to Court.

Counsel prayed for the application to be dismissed.

### Court's consideration of the application

155 This Court derives its jurisdiction to handle such an application from, *among other laws*, **Rule 6 (2) (a) of the Judicature (Court of Appeal Rules) Directions S.I. 13-10** which provides:

160 “(2) Subject to sub rule (1) of this rule, the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the court may—

165 (a) in any criminal proceedings, where notice of appeal has been given in accordance with rule 59 or 60 of these Rules, order that the appellant be released on bail or that the execution of any warrant of distress be suspended pending the determination of the appeal;.....”

The case of **Supreme Court Criminal Reference No. 01 of 2016, Busulwa Blasio Vs Uganda**; reiterated the correct position of the law earlier stated in **Singh Lamba Vs R (1958) EA 337** that an applicant for bail pending appeal must prove exceptional circumstances and/ or unusual reasons to warrant his/her release on bail.

175 The applicant has not proved any point of law that shows that on the face of the trial Court record, his appeal is likely to succeed. In the supplementary memorandum of appeal he relies upon in this application, the applicant complains of wrong admission of evidence, wrong evaluation of that evidence and imposition of an excessive sentence by the trial Court. These are matters whose

180 validity has to be determined by the Court entertaining the appeal.  
As to the appeal being fixed for hearing, this is to be handled by  
this Court through its appeal Criminal appeal session  
arrangement within the Court's time table. Having substantial  
sureties and fixed place of abode are not exceptional  
185 circumstances either.

The applicant in this application has thus not presented any  
exceptional circumstances or reasons to have his application for  
bail pending appeal granted, and therefore, this Court finds no  
merit in the Application. The same is dismissed

190 The Registrar of this court is directed to fix the hearing of the  
applicant's **Criminal Appeal No. 903 of 2014** at the next  
convenient Criminal Session of this Court.

It is so ordered.

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

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

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