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THE REPUBLIC OF UGANDA

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IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

Criminal Application No. 154 of 2019

(Arising from Court of Appeal Criminal Appeal No. 809 of 2014)

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Kamuhanda Moses Kule :: Applicant

Versus

Uganda :: Respondent

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

Ruling of the Court

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Introduction;

The applicant, Kamuhanda Moses Kule, filed this application seeking to be released on bail pending the determination of his **Criminal Appeal No. 809 of 2014** in this court.

The applicant was charged with the offence of **Murder contrary to Section 188 and 189, Aggravated Robbery contrary to Section 285 and 286(2)** of the **Penal Code Act**. He was tried by the High Court at Kasese, (Batema, J) was convicted and was sentenced to respective sentences, the highest being 40 years imprisonment.

The application is brought under **Article 23(6) (a) and 28(1) of the Constitution, Section 132(4) of the Trial on Indictments Act, Cap 23, and Section 40(2) of the Criminal Procedure Code Act, Cap 116 and Rules 43 and 44 of the Judicature (Court of Appeal Rules) Directions**. The application is supported by the affidavit in support deponed to by the applicant.

40 **Representation;**

At the hearing of this application, the applicant self-represented himself while the learned Assistant Principal State Attorney, Charles Bwiso, of the Director of Public Prosecutions (DPP), represented the respondent.

45 **APPLICANT'S CASE**

In his submissions, the applicant prayed to be released on bail pending the disposal of his appeal, on the grounds that; he had lodged **Criminal Appeal No. 809 of 2019** to this Court and the same had prospects of success. However the same had not been fixed for hearing since it was filed in this Court. It is not likely to be disposed of in the near future as he had been informed that the trial High Court records could not be traced. He was a first offender and had never failed to observe his Court bail conditions. He had a permanent place of abode at Karughe Village, Kituti Parish,

55 Karambi Sub-County, Kasese District. He produced three substantial sureties, namely;

Mr. Tembo Suleiman, aged 43 and a resident of Kabahole Village, Kasese District. He is a primary school teacher at Kyaminyawani Primary School, and an elder brother to the applicant.

60 (a) Mrs. Kizza Hellen, aged 43 and a resident of Kabahole Village. She is a primary teacher at Nyamwehera Primary School and a sister-in-law to the applicant.

(b) Mr. Bwambale Stephen, aged 38 years old, a resident of Kabahole Village, also a primary school teacher at
65 Nyakashojo Primary School. He is a younger brother to the applicant.

The applicant prayed to be released on bail pending appeal.

RESPONDENT'S CASE;

70 Counsel for the respondent opposed the application and submitted that the applicant was convicted of very serious offences and currently serving various sentences, the highest being 40 years imprisonment. Once released on bail he would most likely abscond to avoid serving such a long prison sentence.

75 Counsel contended that the applicant had no introduction letter from the LC1 where he claimed to have a home. He did not also avail to Court the national identity card issued to him as a Ugandan. Learned Counsel, further submitted that the sureties presented are relatives to the applicant who have no control over him.

80 Counsel referred Court to the case of **Court of Appeal Criminal
Miscellaneous Application No. 241 of 2014; Sande Pande
Ndimwibo Vs Uganda**; where it was held that for an application
for bail pending appeal, there must be exceptional/or unusual
conditions.. The applicant had not proved any exceptional
85 circumstances/ or unusual reasons proved to warrant his being
released on bail pending appeal.

He prayed for the application to be dismissed.

CONSIDERATION OF COURT

An applicant for bail pending appeal is no longer shielded by the
90 presumption of innocence under **Article 28 of the Constitution**.
Therefore the grounds upon which this court may grant an
applicant bail pending appeal must be constituted by exceptional
circumstances and/or unusual reasons. See: **Sande Pande
Ndimwibo Vs Uganda; Court of Appeal Criminal Application No.**
95 **241 of 2014.**

The applicant has not shown to the satisfaction of court that any
exceptional circumstances and or unusual reasons exist so as to
justify the court to release him on bail pending appeal. He has
provided no proof, and both the High Court and this Court have
100 not communicated to him that the trial High Court records are
irretrievably lost. His appeal can therefore be disposed of by this
Court. The fact that the applicant has a fixed place of abode and
has presented sureties to Court, are, on their own, not exceptional
grounds to have the applicant released on bail pending appeal.

105 This Court is therefore not satisfied that this is a fit and proper
case in which this court is to exercise its discretion to grant bail

pending appeal to the applicant. The Court accordingly declines to grant the application. The same stands dismissed

It is so ordered.

110 Dated and sealed at Kampala this 10th day of March 2020.



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Remmy Kasule
Ag. Justice of Appeal