

5



THE REPUBLIC OF UGANDA

10

IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

Miscellaneous Application No. 159 of 2019

(Arising from Court of Appeal Criminal Appeal No. 93 of 2014)

15 **Hawal Shaban :: Applicant**

Versus

Uganda :: Respondent

20

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

Ruling of the Court

25

This ruling is in respect of an application for bail pending appeal lodged in this Court under **Articles 23(6), 28(3) and 34 (1)** of the **Constitution of the Republic of Uganda**, and **Section 14** of the **Trial on Indictments Act, Cap 23** for an order that this Honourable Court be pleased to release the applicant on bail pending disposed of his **Criminal Appeal No. 093 of 2014**, which is pending in this Court.

30 The applicant was indicted, tried and convicted of the offence of
Aggravated defilement contrary to **Section 129 of the Penal Code**
Act by the High Court of Uganda at Mbale on the 22nd December,
2009. He was sentenced to life imprisonment. Dissatisfied with the
decision of the High Court, he lodged an appeal in this Court **vide**
35 **Criminal Appeal No. 93 of 2014** against both conviction and
sentence. He then filed this application seeking for bail pending
appeal.

The grounds of the application are set out in the notice of motion
as follows;-

- 40 ***“a. That the applicant has a constitutional right to
apply for bail in this Honourable Court.***
- b. That the offence for which the applicant is indicted
of is bailable by this Honourable Court.***
- c. That the applicant is still presumed innocent until***
45 ***proven to the contrary and besides, he has no previous
criminal record or any other pending criminal
charges against him.***
- d. That the applicant has sound and substantial
sureties who are willing to stand for him.***
- 50 ***e. That the applicant shall not interfere in any way with
the evidence and witnesses and will not abscond if
granted bail.***
- f. That the applicant has a permanent place of abode
within the jurisdiction of this Honourable Court.***
- 55 ***g. That the applicant undertakes to abide by all
conditions as shall be set by this Honourable Court.***

h. That in the foregoing premises therefore, it is fair and just to release the applicant on bail pending appeal”.

The application is supported by the affidavit of the applicant.

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

The applicant submitted that he is seeking bail pending appeal
65 because since he was convicted in 2009 and appealed to this Court, he has never got any positive response as to the position of his appeal, though he has been writing to the Registrar of this Court. He thus prays to be released on bail while his appeal remains pending for disposal by this Court.

70 It was also claimed by the applicant that, by reason of his stay in prison, he had developed ulcers and that he was praying to be released on bail so that he can secure medical treatment for the sickness outside the prison. He had a permanent place of abode at Kanyumu, Butema Sub-County, Paliisa District. He also had
75 sound sureties, though the same were absent from Court as he had not had an opportunity to contact them. The sureties were ready to attend Court once so notified. He prayed to be released on bail pending appeal.

Counsel for the respondent opposed the application on the
80 grounds that the applicant is serving a life imprisonment sentence and there were no sureties present in Court to ensure that the applicant will not abscond once released on bail pending appeal. Counsel prayed Court to dismiss the application.

This Court has considered the submissions of Counsel for the
85 respondent. **Section 134 (4) of the Trial on indictments Act and
section 40 (2) of the Criminal Procedure Act** empower this Court
to resolve this application. Bail pending appeal is granted at the
discretion of Court, the discretion being exercised judiciously and
each case being determined on its own merits. See: **Walubiri**
90 **Godfrey Vs Uganda; Court of Appeal Criminal Application No.
44 of 2012.**

An applicant for bail pending appeal must prove exceptional
circumstances and/or unusual reasons if such applicant is to
succeed in the application. The applicant has not produced any
95 proof that his appeal to this Court cannot be disposed of one way
or the other by this Court. This Court has within it a mechanism
to deal with backlog of cases and as such the applicant's **Criminal
Appeal No. 93 of 2014** is to be disposed of under that
arrangement. The alleged delay to dispose of the said appeal is
100 therefore not an exceptional circumstance warranting grant of bail
pending appeal to the applicant. As to the applicant suffering from
ulcers, the applicant can receive treatment from prison while he
continues to serve his sentence.

The length of the term of imprisonment against which the
105 applicant is appealing can be one of the factors which can induce
a convict to abscond. The longer that term; the more likely the
applicant will be tempted to abscond and go into hiding so as to
avoid serving the sentence. See: **Chimambhai Vs Republic. (No.2)
(1971) EA 343.** The length of the sentence therefore militates
110 releasing this applicant for bail pending appeal.

The fact that the applicant has a permanent place of abode and substantial sureties, who happened to be absent in Court, does not amount to exceptional circumstances to have the applicant released on bail pending appeal.


115 This Court is therefore not convinced with the grounds presented by the applicant to be released on bail pending appeal. The application therefore has no merit. It is dismissed.

The Registrar, Court of Appeal, is hereby directed to fix for hearing, **Criminal Appeal No. 93 of 2014**, in which the applicant is the
120 appellant, at the earliest convenient Criminal Session of this Court, so that the same is disposed of on its own merits.

It is so ordered.

Dated at Kampala this 10th of March 2020.

125


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

130