THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

Miscellaneous Criminal Application No. 106 of 2019.

(Arising from Court of Appeal Criminal Appeal No. 184 of 2018)

WALAKIRA LAWRENCE:: APPLICANT

VERSUS

UGANDA:: RESPONDENT

[CORAM: HON. MR. JUSTICE REMMY KASULE, Ag. JA] Sitting as a Single Justice.

RULING OF THE COURT

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, Rules 2** and **4** of the Judicature (Criminal Procedures Application) Rules S.1 13-8 for an order that this Honourable Court be pleased to release the applicant on bail pending disposed of his **Criminal Appeal No. 184 of 2018,** which is pending in this Court.

The applicant was indicted and tried of the offence of murder, but was convicted of the cognate offence of Manslaughter contrary to **Section 187 and 190 of the Penal Code Act** by the High Court at Kampala**.** He was sentenced to life imprisonment. Dissatisfied with the decision of the High Court, he lodged an appeal in this Court vide

Criminal Appeal No. 184 of 2018 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;-

> ***"i) That the applicant has a fundamental constitutional and other legal right to a fair and expeditious hearing.***
>
> ***ii) That the applicant is has a constitutional right to apply for bail pending the hearing and determination of his appeal on such terms and conditions as Court may deem fit.***
>
> ***iii). That the applicant has sound and suitable sureties within Honourable Court who under take to abide themselves and ensure that the applicant will comply with the conditions of the bail if released.***
>
> ***iv). That the applicant is a parent with three (03) biological children and other dependant's to whom he is the sole bread winner.***
>
> ***v). That substantive justice requires delivery without undue regard to technicalities.***
>
> ***vi). That this Court has granted bail to applicants on favorable terms and conditions without strongest conditions that may be hard to fulfil given the fact that the appellant has been in custody for four years.***

vii) That the applicant is a student pursuing a diploma in entrepreneurship and small business management of Makerere University Business School and has completed the first year, granting him bail an opportunity to study in a favourable and conducive environment and also to do internship and industrial training."

The application is supported by the affidavit of the applicant.

At the hearing of the application, the applicant self-represented himself while the learned Senior State Attorney, Nakafeero Fatina, from the office of the Director of Public Prosecutions (DPP) represented the respondent.

In his submissions, the applicant relied on his affidavit in support of the application. He submitted, relying on the Memorandum of Appeal filed in the Court that there are high chances of succeeding in his appeal. He further contended that having fulfilled all the requirements necessary for his appeal to be heard, however it might take long before the same is determined due to the backlog of cases in this Court. The applicant also stated that the charge he was convicted of is bailable, he is also not a violent person as he had he never been involved in a fight. He accordingly prayed to be released on bail pending appeal. He relied on **Supreme Court Criminal Application No. 01 of 2003; Arvind Patel Vs Uganda,** and **Court of Appeal Criminal Application No. 52 of 2018,** and submitted that the none availability of exceptional circumstances/ or unusual reasons ought not to be used to deny one bail.

He prayed to be released on bail pending disposal of his appeal.

Counsel for the respondent opposed the application replying on the affidavit in reply dated 14th February, 2020 deponed to by the learned Assistant Director of Public Prosecutions (DPP) Nabisenke Vicky. She submitted that the offence of which the applicant was convicted is very violent in nature. She further submitted that the appeal is likely to be heard quickly. No memorandum of appeal had been filed on the Court record and as such, if any delay is caused by reason of absence of a Memorandum of Appeal, the applicant will have to blame himself for that.

Counsel referred Court to the decision in the **Court of Appeal Miscellaneous Application No. 241 of 2014; Sande Pande Ndimwibo Vs Uganda,** where it was held that where no exceptional circumstances/ or unusual reasons had been proved, then bail pending appeal ought to be granted to an applicant.

Counsel prayed Court to dismiss the application.

This Court has considered the submissions of Counsel for the 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 Godfrey Vs Uganda; Court of Appeal Criminal Application No. 44 of 2012.**

As a matter of law, 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 proof that his appeal to this Court cannot be disposed of one way or the other by this Court. This Court has a way of dealing with criminal appeals before it, whether under the category of backlog or otherwise, and as such the applicant's **Criminal Appeal No. 184 of 2018** is to be disposed of under that arrangement. It was however a fact that no Memorandum of Appeal had been lodged in this appeal by the applicant. Its absence is a delay caused by the applicant. The alleged delay to dispose of the said appeal is therefore not an exceptional circumstance warranting grant of bail pending appeal to the applicant.

The length of the term of imprisonment against which the 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 fact that the applicant has sureties, who happened to be absent in Court, does not amount to exceptional circumstances to have the applicant released on bail pending appeal.

Having a fixed place of abode, the discomfort and support to the children and other family members of the applicant due to his absence because he is serving a sentence in prison, having been a responsible member of society before conviction, and pursuit of

further education while serving a sentence, are not exceptional circumstances.

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. 184 of 2018**, 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.

It is so ordered.

Dated at Kampala this ....11th....day of....June....2020.

.....

HON. MR. JUSTICE REMMY KASULE.

Ag. JUSTICE OF THE COURT OF APPEAL

11.06.2020
Ruling delivered via zoom in presence of the Applicant and Ms. Nakafeero Patricia counsel for the Respondent

Ayebare Tumwebaze
Ass. Reg COA
11-06-2020