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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. 79
of 2019**

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*(Arising from Court of Appeal Criminal Appeal No. 125 of 2018)
(Arising from High Court at Moroto Criminal Case No. 17 of 2015)*

Auda Hassan :: Applicant

Versus

Uganda :: Respondent

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

Ruling of the Court

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The applicant was convicted of the offence of aggravated defilement contrary to **Section 129(3) (4) (c) of the Penal Code Act** by in the High Court at Moroto, (Henrietta Wolayo,J) on 27th July, 2016. He was sentenced to twelve (12) years imprisonment.

He now seeks to be released on bail pending appeal, on the
30 following grounds:-

“1. The applicant’s appeal has already suffered a substantive delay to be heard.

2. The applicant has spent a long period in prison to wit; 5 years.

35 ***3. It is the Applicant’s constitutional and legal right to apply for bail pending the hearing and determination of his main appeal.***

4. The applicant concedes that he has higher chances of being acquitted on appeal”.

40 The application is supported by the affidavit deposed to by the applicant and opposed by an affidavit in reply sworn by the learned Assistant Director of Public Prosecutions (DPP) Nabisenke Vicky.

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

50 The applicant submitted that he lodged to this Court **Criminal Appeal No. 125 of 2018** against his conviction and sentence, and since the said appeal was likely to take long before being determined, he prayed to be released on bail pending appeal.

He had three (3) substantial sureties, though the same were not in
55 Court as they were not aware of his being produced in Court on
the day of hearing the application. He had a permanent place of
abode at Kakoliyi village, Moroto District. He was a first offender.
He had eight (8) children and an old mother to whom he was the
sole means of support which support he could not render as long
60 as he remained in prison serving the sentence. While in prison he
had undertaken reformatory courses and had personally improved
in behaviour and conduct. He was ready to abide by the bail
conditions that the Court may set. His appeal had high chances of
success as the trial Judge had committed grave errors of law and
65 fact that resulted in the applicant's conviction.

The applicant prayed for the application to be allowed.

Respondent's Case:

Counsel for the respondent opposed the bail application basing on
the grounds in the affidavit in reply; mainly that the applicant did
70 not prove any exceptional circumstances. Counsel further
submitted that the applicant did not provide any details of the
substantial sureties. Counsel also contended that the applicant
being a first offender and having taken reformatory courses while
in prison did not qualify him to be released on bail pending appeal.
75 Counsel prayed for the application to be dismissed and instead
have **Court of Appeal Criminal Appeal No. 125 of 2018**, where
the appellant is appealing against his conviction, to be fixed for
hearing.

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

This Court observes that an appellant seeking bail pending appeal lacks one of the strongest elements normally available to an accused person seeking bail before trial, namely the presumption of innocence guaranteed by **Article 28(3) (a) of the Constitution.**

85 As such, exceptional reasons or circumstances must exist before such a convict can be released on bail pending appeal.

Such exceptional circumstances/ reasons justifying why the applicant should be granted bail, are where an appeal raises an important point of law as to the legality of the conviction of the
90 appellant, or where the sentence is manifestly contestable as to whether or not it is a sentence known 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:
95 **RAGHBIR SINGH LAMBA V R [1958] EA 337.**

On the other hand, for an application for bail pending trial, when the applicant for bail still enjoys the presumption of innocence, and, subject to **Section 15 of the Trial on Indictments Act**, the Court considers, amongst other factors, matters such as the
100 nature of the charges against the applicant, severity of punishment in case of conviction, the nature of evidence to be adduced and whether or not the applicant will not interfere with the trial evidence or with the witnesses.

In the case of an application for bail pending appeal, the Court also
105 inquires and considers the conditions necessary for bail pending trial, but these just provide support to exceptional circumstances

and/ or unusual reasons once the same have been established by the applicant.

110 The applicant in this application has advanced the reason of having lodged an appeal to this Court against his conviction and sentence. The applicant however produced no Memorandum of Appeal to enable this Court assess whether or not his appeal has any chances of success.

115 As to delay in disposing of the applicant's appeal, the applicant was convicted and sentenced on 27th July, 2016 by the High Court. This is about 3 ½ years ago to-date. It is not a very long period of waiting for the disposal of the applicant's appeal in which at any rate, as already stated, the applicant himself has not availed any Memorandum of Appeal. The assertion of the applicant being a
120 first offender, having substantial sureties, though absent in Court, having a permanent place of abode, and lack of support to his children and his family members because of his absence due to serving sentence in prison, were not exceptional grounds for the applicant to be released on bail pending appeal. So too is the fact
125 that the applicant had reformed while in prison through undergoing reformatory courses.

There were no exceptional grounds and/ or reasons advanced by the applicant to justify his being released on bail pending appeal.

130 This Court therefore finds that the applicant has not made out a case to be granted bail pending appeal. The application has no merit. The same stands dismissed.

It is so ordered.

Dated at Kampala this 11th of June 2020.

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Remmy Kasule
Ag. Justice of Appeal

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11-06. 2020

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Ruling delivered via zoom in presence of the Applicant and Ms. Nakajeeo Fatima Counsel for the Respondent.


Ayebare Tumwebaze
As Reg. COA