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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. 78
of 2019**

(Arising from Court of Appeal Criminal Appeal No. 094 of 2015)

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(Arising from Luweero High Court Circuit Criminal Session Case No. 201 of 2012)

Jemba Steven :: 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 This application by notice of motion is seeking release of the
Applicant on bail pending the hearing and final disposal of his
Criminal Appeal No. 094 of 2015 now in this Court.

The application was filed under **Articles 23(6) (a), 23(3)(d) of the
Constitution, Section 40(2) of the Criminal Procedure Code**

30 **Act, Cap 116, Rule 43 (1) and (2) of the Judicature (Court of Appeal Rules) (Directions) S.1; 13-10).**

The grounds of the application stated in the Notice of Motion are that:-

35 ***“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; 8 years.

40 ***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”.

The application is supported by the affidavit of the applicant which states:-

45 ***“2. That, on 24th May 2014, I was arrested from my working place at Luzira, Kisenyi Village, Nakawa Division Kampala district by plain clothed men and taken to unknown place where I was shot and tortured. Later they referred me to Mulago Hospital for medical assistance.***

50 ***3. That, after getting healed, they referred me to Central Police Station (CPS) in Kampala which transferred me to Nakasongola Police Station. And I was arraigned in Court on 24th June 2011 and charged of Aggravated Robbery of one Sade Kasenyi chaired by chief magistrate Court of Nakasongola then remanded to Nakasongola government***
55 ***prison.***

4. ***That, I was indicted to the High Court of Luweero in 2014.***

5. ***That, I was tried on a criminal session holden at Luweero high Court which commenced on 14th December and completed on 24th March 2015 at Luweero high Court.***

6. ***That, on 24th March, 2015, I was tried and subsequently sentenced to 32 years imprisonment by Hon. Justice Mugamba K. Paul at sitting in Luweero.***

7. ***That, on 26th March 2015, I filed an appeal via/through prison administration and as result, my appeal was allocated No. 094 of 2015 by the Court of Appeal.***

8. ***That, my appeal has suffered a substantive delay precipitating justice denied contravening Article 126(2) (b) of the Constitution of the Republic of Uganda.***

9. ***That, I have undertaken reformatory courses during service of my imprisonment, Bible way correspondence school (Basic Bible teachings), and responsible Christian course completed 12 studies with examination memorized 12 verses.***

10. ***That, it is my constitutional right to apply for bail pending Appeal (see Article 23(6) (a) of the Constitution of the Republic of Uganda and section 205(1) of the Magistrates Court Act.***

11. ***That, I have three (3) substantial sureties.***

12. ***That, I have a permanent place of abode at Nasolo Village Nansana Municipality, Wakiso District.***



13. That, I don't have antecedent and this is my first time in my entire life to be arrested over a criminal offence and never failed to abide by any bail condition when released on bail.

85 **14. That, the balance of convenience tilts in my favor as my welfare and that of thirteen children, three siblings and that of my 92 year old grandfather are adversely affected by imprisonment and the respondent stands to suffer nothing if I am released on bail.**

90 **15. That, I am willing to abide by all bail conditions that may be imposed by this Court.**

16. That, I have higher chances of acquittal in my appeal and able to attend Court during the hearing of the Appeal.

17. That, this Court has wide constitutional and other jurisdictional powers to grant me bail (see. 47 of the C.P.C).

95 **18. That, this is just and equitable and in the interest of justice if am released on bail".(sic)**

The respondent filed an affidavit in reply opposing the application. At the hearing of the application, the applicant self-represented himself while the respondent was represented by the learned
100 Assistant Director of Public Prosecutions (DPP) Nabisinde Vicky. The applicant indicated to Court that he was ready to argue the application on his own without being represented by a lawyer.

Before Court, the applicant prayed to be released on bail pending the disposal of his appeal on the grounds that; his appeal has
105 delayed since 2015 because the trial Court file disappeared, and



so the appeal cannot be fixed for hearing. He has children as well as a 92 year old grandfather who are missing his support. He thus prayed this Court to release him on bail so that he can take care of them.

110 The applicant further submitted that none of the sureties was present in Court but prayed to be given more time so that he can communicate to them to be present in Court when needed

Learned counsel for the respondent opposed the application on the grounds that the applicant did not provide details of the sureties
115 though he had been given time to do so. She contended that the applicant had not supplied to Court evidence of fixed place of abode. As regards the delay of disposing of his appeal, there was no evidence availed to Court that the file of the trial Court had gone missing.

120 Respondent's Counsel referred to the decision in **Court of Appeal Criminal Miscellaneous Application No. 69 of 2018; Kitaka Robert Nsubuga V Uganda** and **Court of Appeal Miscellaneous Application No. 241 of 2014; Sande Pande Ndimwibo Vs Uganda** where it was held that the applicant must prove
125 exceptional and/or unusual reasons in order to succeed to be released on bail pending appeal.

Counsel contended that the issue of hardship to family of the applicant is not an exceptional circumstance in an application for bail pending appeal.

130 Counsel prayed this Court to fix the said Criminal Appeal of the applicant for hearing at the next convenient Criminal Session.



This Court has carefully considered the submissions of both the applicant and counsel for the respondent, and the affidavit in support of the application and the one in opposition to the application.

The Court proceeded to hear the application, in the absence from Court of the applicant's sureties because this Court can examine the said sureties later, once it finds that the application has merit.

The grounds upon which this court may grant an application of this nature have been stated in the case of **Igamu Joanita vs Uganda; Court of Appeal Criminal Application No. 0107 of 2013.**

While the right to apply for bail is a constitutional right that stems from the right for one to be presumed innocent until proved guilty under **Articles 23(6) and 28 (3) of the Constitution**, this right ceases to be applicable upon conviction of the applicant of the charge at trial. But even before conviction, an applicant charged with murder is required to prove exceptional circumstances as set out in **Section 15 of the Trial on Indictments Act** before such a one can be released on bail pending trial. It cannot be the law therefore that upon conviction the same person has no duty to prove those exceptional circumstances if such a one applies for bail pending appeal.

The applicant has not shown to the satisfaction of court that exceptional circumstances/ or unusual reasons exist as to justify the court to release him on bail pending appeal. Discomfort to the applicant's children and grandfather caused by his absence because he is serving a sentence in prison after being convicted of

Aggravated Robbery, cannot be exceptional circumstances and/or
160 unusual reasons to justify granting bail to the applicant.

This Court is not satisfied that this is a 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

165 It is so ordered.

Dated at Kampala this 11th June 2020.

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

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11-06-2020
filing delivered via zoom in
presence of the Applicant and
Ms. Nanafeero Fatima counsel for
the Respondent.

~~Signature~~
Ayebare Tumwebaze
As Reg. CoA
11-06-2020