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THE REPUBLIC OF UGANDA

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IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

Miscellaneous Application No. 143 of 2019

(Arising from Court of Appeal Criminal Appeal No. 219 of 2017)

15 **Kawesi Andrew :: 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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This ruling is in respect of an application for bail pending appeal lodged in this Court under **Article 23(6), 28(3)** of the **Constitution, Section 40(2) of the Criminal Procedure Code Act, Cap 116**, and Rules **43(1)** and **(2)** of the Judicature Court of Appeal Rules, Practice Directions.

Background:

30 The applicant, now aged 40 years, was charged and convicted of the offence of Murder contrary to **Section 188 and 189** of the **Penal Code Act** and was sentenced to thirty (30) years imprisonment on the 08th June, 2017 in **High Court of Uganda at Entebbe Criminal Session Case No. 0581 of 2016.**

35 Dissatisfied with the Court's Judgment, the applicant lodged an appeal to this Court vide **Criminal Appeal No. 219 of 2017.** He later lodged this application for bail pending appeal.

This application is supported by the affidavit of the applicant.

40 At the hearing of the application, the applicant self –represented himself while the respondent was represented by the learned State Attorney from the office of Director of Public Prosecutions (DPP) Vicky Nabisinde. The applicant indicated to Court that he had no lawyer and that he was ready to argue the application on his own.

Applicant's Case:

45 Before Court, the applicant prayed to be released on bail pending the disposal of his appeal on the grounds that; he has 10 children who are missing his parental support. He is sick and has swollen legs and the medicine provided in prison has not been able to cure him.

50 The applicant further submitted that the trial Court files of his case in the High Court are missing and he has spent long in prison. He provided to Court sureties. Hence his prayer to be released on bail pending disposal of his appeal.

He prayed for the application to be allowed.



55 **Respondent's Case:**

Counsel for the respondent opposed the bail application on the grounds that; - the applicant is a convict and has not proved any exceptional circumstances/or unusual reasons in support of his application for bail pending appeal. Counsel further submitted
60 that support to children is no ground for the applicant to be released on bail pending appeal, and as regards sickness, counsel for the respondent referred Court to **Section 15 (3) of the Trial on Indictments Act**, which states that grave sickness is an exceptional circumstance if there is a certificate from prison that
65 the prisons authorities cannot provide the necessary treatment or ensure he accesses such treatment while in prison, however, in the instant case there is no certificate on record to that effect.

Counsel contended that there were no details of any missing Court file. The applicant had also not taken any steps to prosecute the
70 appeal. As to the sureties none indicated to Court his or her responsibility to the Court if the applicant is released on bail pending appeal.

Counsel prayed for the application to be dismissed. Counsel instead prayed this Court to order that the applicant's appeal be
75 fixed for hearing.

Court's Consideration of the Application:

This Court has considered the submissions of the appellant and those of counsel for the respondent as well as the pleadings on the Court record.



80 In **Singh Lamba Vs R (1958) E.A 337**, it was held that an applicant for bail pending appeal bears the burden of proving that there are exceptional and/ or unusual reasons which warrant the grant of bail pending appeal. In Uganda currently, **Section 15 of the Trial on Indictments Act** sets out exceptional circumstances
85 in respect of an application for bail in the case of one charged with an offence triable only by the High Court like the one of murder, the applicant in this application was convicted of. If **section 15 of the Trial on Indictments Act** applied to the applicant at his trial in the High Court, it is logical that the same section applies with
90 even greater force to the applicant at the level of applying for bail pending appeal after the applicant has been convicted of the offence of murder by the High Court.

This Court takes it as settled now, that as a matter of law, an applicant for bail pending appeal, has to prove some exceptional
95 circumstances and/ or unusual reasons to be successful in such an application. Some of these are that

- 100 i). Grave illness certified by a medical officer of the prison or other institution or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody.
- ii). A certificate of no objection signed by the Director of Public Prosecutions; or
- iii). The infancy or advanced age of the accused.

The grounds of having substantial sureties, even though none was
105 in Court, and having a fixed place of abode, though relevant, are

not exceptional circumstances or unusual reasons. So too is the applicant's submission that his appeal has not been fixed for hearing when in fact he has not even filed a memorandum of appeal in the same.

110 The applicant has not proved to the satisfaction of this Court any exceptional circumstances and/ or unusual reasons for him to be granted bail pending appeal.

This Court therefore finds no merit in the applicant's application. The same is dismissed.

115 The Registrar, Court of Appeal, is hereby directed to fix for hearing, **Criminal Appeal No. 219 of 2017**, 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.


120 Dated at Kampala this11..... ofJune..... 2020.



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

11.06.2020

130 Ruling delivered via Zoom in presence of the Applicant and Ms. Nanafeero Fatina for the Respondent.


Ayebare Tumebaze
11-06-2020