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THE REPUBLIC OF UGANDA

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IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

**Criminal Miscellaneous Application No.  
145 of 2019**

*(Arising from Court of Appeal Criminal Appeal No. 809 of 2014)*

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**Muhindo Swalleh :::::::::::::::::::::::::::::: Applicant**

**Versus**

**Uganda :::::::::::::::::::::::::::::: Respondent**

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

## **Ruling of the Court**

25 The applicant filed this application seeking to be granted bail pending the hearing and determination of his **Criminal Appeal No. 809 of 2014** pending before this court.

### **Background:**

30 The applicant was charged with the offence of Murder contrary to  
**Section 188 and 189**, Attempted Murder contrary to **Section**  
**204**, Aggravated Robbery contrary to **Section 285 and 286(2)** of  
the **Penal Code Act**. He was tried by the High Court at Kasese,  
(Batema, J) was convicted and was sentenced to respective prison  
35 sentences.

The application is brought under **Article 23(6) (a)** and **28(1)** of the  
**Constitution, Section 132(4)** of the **Trial on Indictments Act,**  
**Cap 23**, and **Section 40(2)** of the **Criminal Procedure Code Act,**  
**Cap 116** and **Rules 43** and **44** of the **Judicature (Court of Appeal**  
40 **Rules)** Directions. The application is supported by the affidavit in  
support deponed to by the applicant.

### **Representation;**

At the hearing of this application, the applicant self-represented  
himself while the learned State Attorney, Peter Mugisha, of the  
45 office of the Director of Public Prosecutions (DPP), represented the  
respondent.

### **APPLICANT'S CASE**

In his submissions, the applicant prayed to be released on bail  
pending the disposal of his appeal, on the grounds that; he has  
50 spent long period in prison without his appeal being determined.  
The trial Court file had also disappeared, and so the appeal cannot  
be fixed for hearing. He has children who are school going and are  
not able to receive his support as long as he remains in prison

55 serving the sentence of imprisonment. His wife as well as his  
parents are also missing his presence, comfort and support by  
reason of his being in custody in prison serving the sentence. He  
thus prayed this Court to release him on bail pending disposal of  
his appeal.

He produced three substantial sureties, namely;

60 Mr. Haruna Pipa, aged 60 years, with National ID No. CM  
5401510A8R3F and a resident of Kasese District. He is a farmer  
and a father to the applicant., Mrs. Biira Mwasumwe, aged 65  
years with National ID No. CF53015108Y4DJ and a resident of  
Kitakombia Village, Kasese District. She is a house wife, Farmer  
65 and a mother to the applicant, Mrs. Hadija Biira, aged 41 years,  
with National ID No. CF78015102T0AD, a resident of Lyemubuza  
Village, Kasese District. She is a house wife, farmer and a  
neighbour to the applicant.

The applicant submitted that each of the sureties was substantial.  
70 He prayed to be released on bail pending appeal.

### **RESPONDENT'S CASE;**

Counsel for the respondent opposed the application and submitted  
that the applicant did not prove any exceptional circumstances.  
Staying long in prison while serving a lawful sentence, failure to  
75 look after his parents, children and family because of being in  
prison due to conviction are not exceptional circumstances for one  
to be released on bail pending appeal. Counsel referred Court to  
the case of **Court of Appeal Criminal Miscellaneous Application**

80 **No. 241 of 2014; Sande Pande Ndimwibo Vs Uganda and Court of Appeal Criminal Miscellaneous Application No. 69 of 2018 Kitaka Robert Vs Uganda**, in support of his submissions that an applicant for bail pending appeal must, in order to succeed, prove exceptional and/ or unusual reasons.

Counsel prayed for the application to be dismissed.

85 **CONSIDERATION OF COURT**

An applicant for bail pending appeal is no longer shielded by the presumption of innocence under **Article 28 of the Constitution**. Therefore the grounds upon which this court may grant an applicant bail pending appeal must be constituted by exceptional  
90 circumstances and/or unusual reasons. See: **Sande Pande Ndimwibo Vs Uganda; Court of Appeal Criminal Application No. 241 of 2014**.

The applicant has not shown, to the satisfaction of court, that any exceptional circumstances and or unusual reasons exist so as to  
95 justify his being released on bail pending appeal. He has not provided proof, and both the High Court and this Court have not so communicated to him, that the trial High Court records are irretrievably lost.

100 The fact that the applicant has a fixed place of abode and has presented sureties to Court, are, on their own, not exceptional grounds to have the applicant released on bail pending appeal. So too is the assertion that the children and other family members of



the applicant are missing his support and comfort by reason of being away from them while serving in prison.

105 This Court is therefore not satisfied that this is a fit and proper 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


It is so ordered.

110 Dated at Kampala this .....11<sup>th</sup>..... of June..... 2020.



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

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11.06. 2020  
Ruling delivered via zoom today the  
11.06. 2020 in presence of Ms. Nakafero  
Fatina Counsel for the Respondent, the  
Applicant and Sara Namafanda etc.  
Delivered by Ayebare Lumbare  
A. Rep. Co A  
  
11.06. 2020 .