

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**Miscellaneous Criminal Application NO.168 of 2019.**  
**(Arising from Court of Appeal Criminal Appeal No. 900 of 2014)**

**BETWEEN**

**KAVUMA GEORGE:..... 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 to this Court under **Rule 6(2) (a)** of the Rules of this Court.



**Background:**

The applicant, aged 32 years at the time of lodging the application, was convicted of the offence of Aggravated robbery contrary to section 285 and 286 (2) of the Penal Code Act and was sentenced to thirty One (31) years and Six (6) months imprisonment.

Dissatisfied with the Court's Judgment, the applicant lodged an appeal to this Court vide Criminal Appeal No. 900 of 2014. He later lodged this application for bail pending appeal.

The application was supported by applicant's affidavit dated 19<sup>th</sup> September, 2019 and was opposed by the respondent through an affidavit in reply by Rachel Namazzi, Senior State Attorney, office of the Director of Public Prosecutions (DPP), filed in this Court on 18 November, 2019.

At the hearing of the application, the applicant self-represented himself while the respondent was represented by Lilian Nandawula, Senior State Attorney.

**Applicant's Case:**

Before court, the applicant prayed to be released on bail pending the disposal of his appeal on the grounds that; ~~that~~ he is the sole provider of his family taking care of his wife and 2 children, and had substantial sureties in the persons of Nangobi Christine and, Ssenabulya James, respectively sister and brother to the applicant.

The applicant also contended that his appeal had a very high likelihood of success on several points of law and also that his appeal



is likely to take long before being disposed of, given the case back log before the Court of Appeal.

He prayed for the application to be allowed.

### **Respondent's Case:**

Counsel for the respondent opposed the bail application on the grounds that the applicant had not shown how his appeal had chances of success. There was also no proof that the determination of his appeal had been delayed. The applicant was a convict of aggravated robbery and as such he had no good character.

The applicant had also not proved that he had a fixed place of abode. As to both sureties, respondent's Counsel submitted that they were both young brother and sister of the applicant and as such had no power over the applicant.

Counsel prayed for the application to be dismissed.

### **Courts Consideration of the Application:**

In the case of **Arvind Patel v Uganda: Supreme Court Criminal Application No. 1 of 2003**, Court laid down some of the considerations which a Court entertaining an application for bail pending appeal may consider, namely:

- a) The character of the applicant.
- b) Whether he/she is a first offender or not.
- c) Whether the offense of which the applicant was convicted involved personal violence.



- d) The appeal is not frivolous and has a reasonable possibility of success.
- e) The possibility of substantial delay in determination of the appeal, and
- f) Whether the applicant has complied with the bail conditions granted after conviction and during the pendency of the appeal, if any.

The above considerations however, in the considered view of this Court, depend on the overriding fact that the appellant seeking bail pending appeal, lacks one of the strongest elements, normally available, to an accused person seeking bail before trial, that is the presumption of innocence. As such, exceptional reasons or circumstances must exist before such a convict can be released on bail pending appeal. Such exceptional circumstances and/ or reasons are: where an appeal raises an important point of law as to the legality of the conviction of the 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: RAGHIR SINGH LAMBA Vs R. [1958] EA 337.**

This is in contrast to the considerations for bail pending trial, when the applicant for bail still enjoys the presumption of innocence, and the Court may consider the 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 evidence or with the witnesses before the trial is Concluded.

The applicant in this application has not established before this Court any points of law that can be said to indicate that the appeal has any likelihood of success. No memorandum of appeal was availed to Court.

The fact that the applicant's family faces hardship since he claims to be the sole provider of the same, does not constitute an exceptional circumstance or an unusual reason for granting bail pending appeal. See: **Igamu Joanita v Uganda: Court of Appeal Criminal Application No. 154 of 2013.**

This court also has doubt, as to whether the sureties are substantial enough. The two sureties are young siblings of the applicant, who are not likely to have any influence or authority to command the applicant, their elder brother, so as to ensure he satisfies the bail conditions of this Court. Yet the offence of which the applicant stands convicted of Aggravated Robbery is a very grave one and involved use of personal violence by the applicant at its commission.

The applicant has thus 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 Application. The same is dismissed.



The Registrar, Court of Appeal, is hereby directed to fix for hearing, **Criminal Appeal No. 900 of 2014**, at the earliest most convenient Criminal Session of this Court.

It is so order.

Dated at Kampala this <sup>15<sup>th</sup></sup> day of Jan 2020.

A handwritten signature in blue ink, appearing to read 'Remmy Kasule', is written over a horizontal dotted line.

**HON. MR. JUSTICE REMMY KASULE**

**Ag, JUSTICE OF THE COURT OF APPEAL**