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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.
185 of 2019**

(Arising from Court of Appeal Criminal Appeal No. 498 of 2015)

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Niyigaba Gerald :: Applicant

versus

Uganda :: Respondent

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

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Ruling of the Court

This ruling is in respect of an application for bail pending appeal. The Application is brought under **Section 40(2)** of the **Criminal Procedure Code Act Cap 116** and **Rules 43 (1) and (2)** of the **Judicature (Court of Appeal Rules) Directions S1 13-10).**

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Background:

The applicant, was convicted of the offence of Murder contrary to **section 188 and 189 of the Penal Code Act** and was sentenced to imprisonment of thirty (30) years by **Hon Lady Justice Nahamya Ibanda** in **High Court Criminal Case No. 314 of 2011**

Dissatisfied with the court's decision, the applicant lodged an appeal vide **Criminal Appeal No. 498 of 2015** to this Court, and later, this application for bail pending appeal.

The application is supported by the affidavit of the applicant dated 01 October, 2019 and is opposed by the respondent's affidavit in reply sworn by the Learned Nabisenke Vicky, an Assistant Director of Public Prosecutions.

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

Applicant's Case:

Before Court, the applicant prayed to be released on bail pending the disposal of his appeal, on the grounds that; he has a fixed place of abode in Namuwongo Zone B, Makindye Division, Kampala District, he is the sole provider to his four children, and that he had substantial sureties. However, none of the sureties was present in Court at the time of hearing this application

The applicant prayed for the application to be allowed.

Respondent's Case:

Counsel for the respondent opposed the bail application on the grounds that the applicant did not prove any exceptional circumstances. No memorandum of appeal had been also filed on
60 record. Therefore the applicant had not proved in any way that his appeal has any reasonable chances of success.

Counsel prayed for the application to be dismissed and have instead **Court of Appeal Criminal Appeal No. 498 of 2015** where the appellant is appealing against his conviction to be fixed for
65 hearing.

Courts Consideration of the Application:

This Court observes that an appellant seeking bail pending appeal lacks one of the strongest element normally available to an accused person seeking bail before trial, namely the presumption
70 of innocence guaranteed **by Article 28(3) (a) of the Constitution**. As such, exceptional reasons or circumstances must exist before such a convict can be released on bail pending appeal. Indeed, given the fact that the applicant was charged of murder, even at trial, he had to prove exceptional Circumstances before he could
75 be released on bail. See: **Section 15 of the Trial on Indictments Act, Cap 23**. The position cannot thus be otherwise in case of bail pending Appeal.

For bail pending appeal, such exceptional circumstances/ reasons justifying why the applicant should be granted bail, are where an
80 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: **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 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. The Court may also inquire into the character of the applicant, whether or not the applicant has a fixed place of abode and the hardship to family members.

In the case of an application for bail pending appeal, the Court also 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.

The applicant in this application has advanced the reason that he has a place of abode in Namuwongo Zone B, in Makindye Division, Kampala District, and that he is the sole provider of his four children.

The fact that the applicant's children face hardship because he is the sole provider to them, does not constitute an exceptional circumstance or reason for granting bail pending appeal. **See:**

110 **Igamu Joanita v Uganda: Court of Appeal Criminal Application
No. 154 of 2013.**

No sureties were also in Court to assure the Court that the applicant will return to Court once released on bail.

115 The applicant, in the considered view of this Court, has not established any exceptional circumstances and/or reasons to justify his being granted bail pending appeal

Having considered all the circumstances upon which this application is grounded, this Court finds that the application has no merit and the same stands dismissed.

It is so ordered.

120 Dated at Kampala this 3rd day of March 2020.



Remmy Kasule
Ag. Justice of Appeal

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