

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL UGANDA AT KAMPALA

Miscellaneous Criminal Application NO.144 of 2019.

(Arising from Court of Appeal Criminal Appeal No. 60 of 2019)

BETWEEN

KALIISA DUNCAN:..... 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 in this Court under **Rule 6(2) (a)** of the Court Rules.

Background:

The applicant, aged 25 years, was convicted of the offence of simple defilement contrary to section 129 (1) of the Penal Code Act and was sentenced by **Hèr Worship Nasambu Esther Rebecca Chief Magistrate, Nabweru, and** the sentence was confirmed by the **Hon. Lady Justice Jane Frances Abodo, of High Court, Kampala.**

Dissatisfied, the applicant lodged an appeal to this Court vide **Criminal Appeal No. 60 of 2019.** The applicant lodged this application for bail pending appeal.

The application is supported by the affidavit of the applicant dated 15th August, 2019 and is opposed by the respondent through an affidavit in reply by Faith Turumanya, Assistant Director of Public Prosecutions (DPP), filed in this Court on the 15th November, 2019.

At the hearing of the application, the applicant was represented by Counsel Mwebaza Lydia while the respondent was represented by learned Senior State Attorney Rachel Namazzi of the office of DPP.

Applicant's Case:

Counsel for the applicant prayed that the applicant be released on bail pending the disposal of his appeal, as he had a place of abode in Kiyaga Zone LC1, Bwaise, Kawempe Division and had also substantial sureties in the persons of Namanya Richard, paternal uncle to the applicant, and Mutabazi Nixon, Cousin to the applicant.

Counsel further submitted that the applicant's appeal had a very likelihood of success as there were points of law whereby the trial Court committed gross errors such as failure to properly evaluate the evidence, overlooking grave inconsistencies and misconstruing the record of proceedings. The applicant was a first offender, still in his early youth and no personal violence is alleged to have been used in the commission of the offence. Counsel prayed for the application to be allowed.

Respondent's Case

Counsel for the respondent opposed the bail application on the grounds that it was not true that the applicant's appeal had chances of success as the applicant was rightly convicted and sentenced as charged. The applicant had not availed any proof that there was no violence in the commission of the offence of which the applicant was convicted. The applicant had also not shown any exceptional circumstances and or unusual reasons justifying why he should be released on bail pending appeal. Counsel prayed for the application to be dismissed.

Court's resolution of the Application:

This Court appreciates the position of the law to be that in an application for bail pending appeal, the applicant must satisfy Court, of the existence of exceptional circumstances and/ or unusual reasons as to why that applicant ought to be released on bail. This is

because such an applicant no longer enjoys the presumption of innocence under **Article 28(3) (a) of the Constitution**. It is also the law that a Court conviction is deemed to be right until the contrary is proved. **See: Supreme Court Criminal Reference No. 01 of 2016: Busulwa Blasio Vs Uganda, and also: Court of Appeal Criminal Application: No. 208 of 2018: Kamwana Daniel Vs Uganda.**

An applicant seeking bail pending appeal, lacks one of the strongest elements, normally available to an accused person seeking bail before trial, namely the presumption of innocence. As such exceptional reasons or circumstances must exist before such a convict can be released on bail pending appeal. The exceptional Circumstances or unusual 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: **RAGHBIR SINGH LAMBA Vs R [1958] EA 337.**

This is in contrast to the consideration for bail pending trial, when the applicant for bail still enjoys the presumption of innocence and the Court may consider, amongst others, the nature of the charges against the applicant, the severity of punishment in case of conviction, the nature of evidence to be adduced at trial and whether or not the applicant will interfere with the same or with the witnesses.

The applicant in this application has advanced the reasons that he has a place of abode in Kiyaga zone LC1, Bwaise, Kawempe Division and that he has substantial sureties in the persons of Namanya Richard and Mutabazi Nixon, respectively paternal uncle and Cousin to the applicant. It has also been submitted that the applicant's appeal has a very high likelihood of success as there are points of law that were never considered by the learned High Court appeal judge. It is also asserted that, being a first offender with no previous criminal records, and the offence of which he was convicted, being one that did not involve personal violence, the applicant ought to be released on bail pending disposal of his appeal which is likely to take long before it is determined, given the backlog before this Court.

In the considered view of this Court, many of the grounds advanced do not fall within the ambit of the exceptional circumstances and / or unusual reasons justifying the applicant to be released on bail pending appeal. They are the usual grounds relevant to an application for bail pending trial when the applicant still enjoys the presumption of innocence. At this stage now, the applicant is a convict and thus no longer enjoys the presumption of innocence. He can only be released on bail on exceptional and/ or unusual reasons.

With regard to the reasonable possibility of his appeal succeeding, this Court has perused the grounds in the availed Memorandum of Appeal. They involve issues of evaluation of evidence, interpreting the record of appeal and dealing with inconsistencies. There is no evidence, that on the face of any of the grounds of the proposed appeal, this Court can conclude that the appeal will be allowed.

As to the assertion that there was no violence involved during the commission of the crime, the offence of defilement by its very own nature involves violence. There is therefore no merit in this submission.

In Conclusion, this Court finds that the applicant has failed to discharge the burden of establishing special circumstances and / or unusual reasons to entitle him to be released on bail pending his appeal. This application stands dismissed.

It is so ordered.

Dated at Kampala this 22nd day of January 2020.



HON. MR. JUSTICE REMMY KASULE

Ag. JUSTICE OF THE COURT OF APPEAL