

**Kaye Kizito v Uganda (Criminal
Application No. 141 of 2019)
[2020] UGCA 2029 (3 March 2020)**
[2020] UGCA 2029

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

\$25\$

Ruling of the Court

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

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Act, Cap 116 and Section 132(4) of the Trial on Indictments 30 Act.

Background:

The applicant, now aged 59 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 twenty five (25) years

35 imprisonment on the 10th April, 2013 in **High Court of Uganda** at Kiboga Criminal Session Case No. 281 of 2012.

Dissatisfied with the Court's Judgment, the applicant lodged an appeal to this Court vide **Criminal Appeal No. 36 of 2013**. He later lodged this application for bail pending appeal.

This application is supported by the affidavit of the applicant dated 16th July, 2019.

At the hearing of the application, the applicant self –represented himself while the respondent was represented by the learned Acting Principal State Attorney from the office of Director of Public Prosecutions (DPP) Charles Bwiso. 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:

- Before Court, the applicant prayed to be released on bail pending 50 the disposal of his appeal on the grounds that; for 8 years, his appeal has not been considered. There was thus a possibility that he would spend more time in prison without his appeal being determined. This is much injustice to him. Hence his prayer to be released on bail pending disposal of his appeal. \$55\$
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The applicant further submitted that he had substantial sureties, even though none of them was present in Court. However, given time, he would communicate to them to appear before Court if his application for bail pending appeal is found by Court to have merit.

He prayed for the application to be allowed. 60

Respondent's Case:

Counsel for the respondent opposed the bail application on the grounds that the absence of the trial Court file, could be handled administratively by the Court and the applicant's appeal disposed

of. He further submitted that the sureties the applicant intended \$65\$ to rely upon had been earlier rejected by this Court in the earlier application to this Court for bail pending appeal by the applicant.

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

Court's Consideration of the Application: 70

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.

In the case of Arvind Patel Vs Uganda; Supreme Court Criminal

Application No. 1 of 2003, Justice Oder, JSC (RIP) observed \$75\$ that each application for bail pending appeal must be considered on its own facts and circumstances.

However, earlier on, before the decision of **Arvind Patel** was made, it had been held in **Singh Lamba Vs R (1958) E. A 337**, that an applicant for bail pending appeal bears the burden of proving that

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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 the following exceptional circumstances in respect of an application for bail in respect of one charged with an offence triable only by the High Court like the one, 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 even greater force to the applicant at the level of applying for bail pending appeal after the applicant has already been convicted of the offence of murder of which he was tried in 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 circumstances and/ or unusual reason to be successful in such an application.

The grounds of having substantial sureties, even though none was 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.

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. 105 The same is dismissed.

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The Registrar, Court of Appeal, is hereby directed to fix for hearing, Criminal Appeal No. 36 of 2013, 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.

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Remmy Kasule Ag. Justice of Appeal

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