

UGANDA / JUDGMENT

Mwetitse Steven v Uganda (Criminal Application No. 80 of 2019) [2020] UGCA 2027 (3 March 2020)

[2020] UGCA 2027**COURT**

Court of Appeal of Uganda

BEFORE

Kasule, JA

CASE / FILE NUMBER

Criminal Application No. 80 of 2019

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA**Miscellaneous Criminal Application No. 80 of 2019**

(Arising from Court of Appeal Criminal Appeal No. 49 of 2018) (Arising from High Court at Mubende Criminal Case No. 339 of 2015)

Mwetitse Steven ::::::::::::::::::::**versus**

- \$20\$ <table>

Uganda ::::::::::::::::::::

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

\$25\$

\$30\$

Ruling of the Court

The applicant was convicted of the offence of murder contrary to Section 188 and 189 of the Penal Code Act by the High Court at Mubende, on 08th October 2015. He was sentenced to Twenty One (21) years imprisonment.

\$10\$

He now seeks to be released on bail pending appeal, on the following grounds:-

- > "1. The applicant's appeal has already suffered a substantive delay to be heard.
2. The applicant has spent a long period in prison to wit: 8 years.
3. It is the Applicant's constitutional and legal right apply for bail pending the hearing and \$ \boldsymbol{to} \$ determination of his main appeal.
4. The applicant concedes that he has higher chances of being acquitted on appeal".

The application is supported by the affidavit of the applicant which states:-

"1. That, am a male adult Ugandan of sound mind aged 40 years and am well conversant with all relevant factual issues/ matters regarding this case and do solemnly swear this affidavit in that capacity.

2. That, on 17th October 2013 I was arrested from my working place at Mubende municipality Mubende district by people in police uniform and taken to kasambya police station. I was told that the reasons of my arrest was that I had killed one Wilson Katararwa, I was subsequently charged of Murder c/s 188 and 189 of Penal Code Act.
3. That, on 28th September 2013 I was arraigned before magistrate's Court of Mubende where I was charged

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of Murder contrary to Section 188 and 189 of the Penal Code Act and remanded to Muyinayina Farm *government prison.*

4. That, I was indicted on the 15th May 2014.
- 5. That, I was tried on criminal session holden at Mubende High Court which commenced on 1st May 2015 and completed on 8th October 2015 at Mubende High Court chaired by Honorable Justice Wilson Masalu Musene and subsequently sentenced as charged and convicted to 21 years imprisonment.
- 6. That, dissatisfied with the verdict of the trial Court, on 10th October 2015, I filed an appeal via/through prison Administration and failed to get the results and transferred to Jinja Main Prison where I appealed out of time as result, my appeal was allocated 49 of 2017 by the Court of Appeal.

- 7. That, my appeal has suffered a substantive delay *precipitating justice denied contravening Article* \$126(2)(b)\$ of the Constitution of the Republic of Uganda.
- 8. That, it is my Constitutional right to apply for bail pending Appeal (See Article 23 \$(6)\$ (a) of the Constitution of the Republic of Uganda 1995 (as

\$\mathsf{S}\$

\$70\$

amended) and section 205(1) of the Magistrates Court act.

- 9. That, I have three (3) substantial sureties.
- 10. That, I have a permanent place of abode at Tojo Village Kigandu Sub-County Mubende district.
- \$11.\$ That, I don't have any antecedent and this is my first time in my life to be arrested over a criminal offence and never failed to abide by any bail condition when released on bail
- 12. That, the balance of convenience tilts in my favor as my welfare and that of 7 children and two wives my children are adversely affected by imprisonment and the respondent stands to suffer nothing if \$I\$ am released on Bail.

13. That, I am willing to abide by all conditions that may be imposed by this Honorable Court.

- 14. That, I have higher chances of acquittal in my appeal and able to attend Court during the hearing of the Appeal.
- 110 15. That, this Court has wide Constitutional and other juris dictionary powers to grant me bail. See. 47 of \$(CPC)\$
- 16. That, this is just and equitable and in the interest of justice if am released on bail.
- 17. That, this affidavit is sworn in support of instant application.
- 18. That, whatever is stated herein is true to the best \$120\$ of my knowledge and nothing material has been concealed." (SIC)

The respondent filed an affidavit in reply opposing the application. At the hearing of the application, the applicant self –represented 125 himself while the respondent was represented by the learned Senior State Attorney, Nakafeero Fatina, from the office of the Director of Public Prosecutions (DPP). The applicant indicated to Court that he was ready to argue the application on his own without being represented by a lawyer. 130

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Before Court, the applicant prayed to be released on bail pending the disposal of his appeal on the grounds that; he has children as well as his parents who are missing his support and he prayed to this Court to have him released on bail so that he could take care of them.

The applicant further submitted that none of the sureties was present in Court but prayed to be given more time so that he could communicate to them.

Learned counsel for the respondent opposed the application on the grounds that the applicant had failed to show by evidence that the 140 appeal had likelihood of success as no copy of the Judgment had been availed to Court and no memorandum of appeal had been filed in this Court.

Counsel referred to the decision in **Court of Appeal Miscellaneous**

Application no. 241 of 2014; Sande Pande Ndimwibo Vs 145 **Uganda** where it was held that sympathy and discomfort to family members cannot constitute exceptional grounds for purposes of a bail application pending appeal.

Counsel further submitted that there was no substantial delay of the hearing of the applicant's appeal and asked Court to fix the 150 said appeal for hearing at the next convenient criminal session. This Court has carefully considered the submissions of both the

applicant and counsel for the respondent, and both the affidavits in support of the application and the one in reply to the application. 155

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The Court proceeded to hear the application, in the absence from Court of the applicant's sureties because this Court can examine the said sureties later, once it finds that the application has merit.

The grounds upon which this court may grant an application of this nature have been stated in the case of **Igamu Joanita vs Uganda Criminal Application No. 0107 of 2013**.

While the right to apply for bail is a constitutional right that stems from the right for one to be presumed innocent until proved guilty under Articles 23(6) and 28 (3) of the Constitution, this right ceases to be applicable upon conviction of the applicant of the 165 offence charged. But even before conviction, an applicant charged with murder is required to prove exceptional circumstances as set out in **Section 15 of the Trial on Indictments Act** before such a one can be released on bail pending trial. It cannot be the law therefore that upon conviction the same person has no duty to 170

prove those exceptional circumstances if such a one applies for bail pending appeal.

The applicant has not provided any evidence to prove that his appeal is not frivolous and has a likelihood of success.

The applicant has also not shown to the satisfaction of court that 175 special circumstances exist as to justify the court to release him on bail pending appeal. Discomfort to the applicant's children and parents caused by his absence because he is serving a sentence in prison after being convicted of murder, cannot be exceptional

circumstances and/or unusual reasons to justify granting bail to 180 the applicant.

This Court is not satisfied that this is a case in which this court is to exercise its discretion to grant bail pending appeal to the

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applicant. The Court accordingly declines to grant the application.

The same stands dismissed 185

It is so ordered.

S^A lovel $\bigtriangleup$ 2020. Dated at Kampala this.....

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Remmy Kasule Ag. Justice of Appeal

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