THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

Coram: Arach-Amoko, Opio-Aweri, Muhanguzi; JJ.SC

CRIMINAL REFERENCE. NO. 13 of 2020

MAGOMBE JOSEPH JOSHUA::APPLICANT

VERSUS

UGANDA ::RESPONDENT

(A reference arising from the decision of Dr. Esther Kisaakye, JSC in Misc. Application No. 11 off 2019, dated 14th October, 2020)

RULING OF THE COURT

This is a criminal reference arising from Supreme Court Miscellaneous Application No.11 of 2019 wherein a single Justice of this court declined to grant bail pending the applicant's appeal in Supreme Court Criminal Appeal No. 39 of 2019.

Background

The brief background to this application is that on the 27th of April 2015, the applicant was convicted by the High Court Anti-Corruption Division with 4 offences namely Theft; Electronic Fraud; Unauthorized Access contrary to the Computer Misuse Act 2011; and Conspiracy to commit a felony. He was sentences to serve 7 years' imprisonment each on the counts of Theft, Electronic Fraud and Conspiracy to commit a felony and 9 years' imprisonment on the count of unauthorized Access. The sentences were to run concurrently.

The applicant appealed to the Court of Appeal. The Court Acquitted him of the offences of unauthorized Access and conspiracy to

commit a felony, but upheld his convictions and sentences for Theft and Electronic Fraud.

Dissatisfied with part of the judgment of the Court of Appeal, the applicant filed a Notice of Appeal on the 11th day of September 2019 and the present application for bail pending appeal on 18th November 2019. The learned single Justice found that there is no constitutional provision that provides for bail pending appeal and thus declared rule 6(2) of the rules of this court which empowers this court to hear and determine such applications unconstitutional.

Dissatisfied with the single Justice's decision, the applicant filed this reference on the following grounds listed in his memorandum of reference:

1. The learned single Justice erred in law when she held that the Supreme Court or an appellate court has no jurisdiction to hear and determine application for bail pending appeal.

2. The learned Single Justice erred in law when she held that the jurisdiction of the Supreme Court in criminal matters is only restricted to hearing appeals.

3. The learned Single Justice erred in law and fact when she held that Rule 6(2) of the Judicature (Supreme Court Rules) Directions SI 13-11 that empower the court to release an appellant on bailing pending the determination of his appeal is inconsistent with Articles 23(1) (a), 132 (2), 21, 126(10 and 2 (2) of the constitution.

4. The learned single Justice erred in law when she delved into the constitutionality of Rules 6(2) Judicature (Supreme Court Rules) Direction SI 13-11 without according the applicant an opportunity to address court on the same.

5. That the learned single Justice erred in law and fact when she exercised her discretion wrongly and or unreasonably and or

harshly when she failed to properly apply the law governing bail pending appeal in the appellate court thereby wrongly rejecting the applicant' bail application.

The Applicant seeks orders that: -

(a) The learned single Justice's order rejecting the application be set aside and/or varied.

(b) That an order granting bail pending appeal on the terms proposed in Criminal Application No. 11 of 2019 or any other terms as court may deem it fit.

Representation

The applicant was represented by Mr. Evans Ochieng on private brief while Ms Harriet Angom, Chief State Attorney represented the respondent. The applicant was present in court by video link. Both parties filed written submissions which they prayed to be adopted by court.

Submissions for the Applicant

Grounds one and two

Counsel for the applicant submitted that the decision of the learned single Justice was *per in curium*, violated principles of constitutional interpretation and erroneous. Counsel relied on **Paul K. Ssemogerere & Ors Vs. Attorney General, Supreme Court Constitutional Appeal No. 1 of 2002** and **Bukenya Church Embrose Vs. Attorney General, Constitutional Petition No. 26 of 2001** and submitted that it was an error on the part of the learned single justice to rely on Article 132(2) of the Constitution in isolation of other constitutional and statutory provisions in determining the jurisdiction of this court.

He added that Article 132(2) of the Constitution must be read together with Article 150, Article 79 and Sections 40, 41(1), (5) of the

Judicature Act to fully determine the jurisdiction of this court and the applicability of this court's rules, particularly, rule 6(2) (a).

Counsel argued that by the provisions under section 41(1) of the Judicature Act, the rules committee made the supreme court rules and thus have a full force in law because the rules committee derives its powers from Article 150(1) of the Constitution. Counsel therefore faulted the learned single Justice for interpreting Article 132 of the Constitution in isolation without considering the provisions of Articles 150, 79 and Sections 40 and 41 of the Judicature Act. In his view, counsel contended that if the learned single Justice had considered these provisions, she would have come to a different conclusion most probably that the concept of bail after conviction is legal, and has a constitutional background.

Counsel submitted further that the Supreme Court is a creature of statute by virtue of Article 130 of the Constitution and is empowered to release appellants on bail pending appeal under section 40 of the Criminal Procedure Code Act a much earlier legislation of 1950 which is operational up to date. He further argued that section 132(4) of the Trial on Indictment Act which came into force in 1971, also empowers court to grant bail pending appeal at its discretion.

Counsel emphasized that the Constitution only gives the legal framework and principles but does not give the detailed fundamentals of principles of laws and procedures which are embedded in different statutory provisions, statutory instruments, court precedents, legal publications and law books in order to achieve justice and or prevent the abuse of court process.

Grounds three and four.

Counsel raised two issues under these grounds.

1. Whether the provisions of rule 6(2) of this court's rules that empower the court to release an appellant on bail pending the

determination of his appeal is inconsistent with Articles 23(6), 23(1)(a), 132(2), 21, 126(1) and 2(2) of the Constitution.

2. Whether /the applicant was given a fair hearing to address court on the constitutionality of rule 6(2) of this court's rules.

Counsel submitted that rule 6(2) of the rules is not inconsistent with Articles 23(6), 23(1)(a), 21, 126(1) and 2(2) of the Constitution because the rules have a constitutional background under Articles 150 and 79 of the Constitution. Further, that although the Constitution does not expressly provide for bail pending appeal, it cannot be implied either that it bars that right. He added that Article 132(1)(a) relied on by the learned single Justice is not applicable when determining the constitutionality of rule 6 because it deals with deprivation of personal liberty and it does not bar any person to apply for bail pending appeal.

On the second issue, counsel contended that the learned single Justice did not accord the applicant an opportunity to address court on the constitutionality of rule 6 before she determined the application.

Ground 5

Counsel contended that the learned single Justice erred in law and fact when she failed to apply the law governing bail pending appeal in appellate court thereby wrongly rejecting the applicant's application.

Counsel argued that it would be an injustice for an applicant to serve a sentence that may be later set aside on appeal yet this court has powers under rule 2(2) of the rules to make such orders such as granting an application for bail pending appeal so as to meet the ends of justice.

Counsel prayed that this court allows this application and re-considers the grounds of the applicant's application on record and grant the application on reasonable terms.

Submissions for the respondent in reply

Grounds 1, 2, 3 and 5

Counsel for the respondent supported the learned single Justice's findings that the case of **Arvind Patel Vs. Uganda SCCA No. 1 of 2003** was wrongly decided and that there is no constitutional right that permits the seeking and granting of bail of a person who has already been convicted of a criminal offence and as a result rule 6 (2) of this court's rules that permits the court to grant bail is indeed inconsistent with the Constitution.

Counsel argued that the applicant is no longer presumed innocent because he is now a duo convict of two lower courts and thus bringing him squarely within the constitutionally permitted restriction of the right to personal liberty. In support of her argument, she cited this court's earlier decisions of **Bamutura Henry Vs. Uganda, SC.MA No. 9 of 2019, John Kashaka Muhanguzi Vs. Uganda, SCCA No. 18 of 2019** and **Kyeyune Mitala Julius Vs. Uganda, SC. MA No. 9 of 2016.**

Counsel contended that the learned Justice was alive to other provisions of the Constitution and properly analyzed them before she came to her conclusion. She added that the learned Justice gave articles 23(1) and 132(2) their literal meaning and she needed not to consider the principles of constitutional interpretation.

She pointed out that the power given by the parliament under Article 150 of the Constitution is subject to the Constitution and as such the parliament cannot make laws that are inconsistent with the Constitution. Counsel thus concluded that since the Constitution does not expressly provide for the right to apply for bail pending

appeal, any law that empowers courts to grant such an application is null and void to that extent.

Ground four.

Counsel submitted that it was not in error that the applicant was not given an opportunity to be heard on the constitutionality of rule 6(2) of this court's rules because the court is not bound by submissions of parties. She pointed out that the learned Justice dealt with the law not the evidence which the applicant could have perhaps rightly submitted on. According to counsel, the applicant's submission on the issue of constitutionality of rule 6(2) of the rules wouldn't have changed the learned Justice's decision because she exercised her discretion under rule 2.

Counsel submitted in the alternative that if court finds that it has the jurisdiction to hear this application, the application should be denied for lack of merit.

Counsel contended that the applicant's honour of bail terms in the lower courts is no guarantee that he wouldn't abscond at this stage because this is the last court and the chances of jumping bail are higher.

She added that although the offences did not involve personal violence, the offences that the applicant was convicted of are of a serious nature and grave. She relied on **John Kashaka Muhanguzi Vs. Uganda**, (supra), for the preposition that the requirement of personal violence should not be applied to corruption and corruption related cases.

Counsel argued that the applicant has not pleaded any unusual and exceptional circumstances to warrant the grant of his application. In support of this argument, she cited **Bamutura Henry Vs. Uganda,** (supra).

Further, counsel submitted that the appeal has no likelihood of success because the grounds of the appeal on record are interrelated with the grounds of appeal at the Court of Appeal. She argued that the victims of the crime deserve justice. Counsel also argued that there is no substantial delay in prosecution of the applicant's appeal because the court is fully constituted. She pointed out that the applicant's application was fixed and heard expeditiously a fact that implies that the appeal will not delay. She prayed that this court upholds the decision of the learned single Justice and dismiss the application.

Consideration of the grounds of the reference

We have carefully considered the grounds of the reference, the submissions of counsel as well as the authorities cited and the law.

This reference arose from the decision of a single Justice of this court in the course of determining an application for bail pending appeal.

It is settled law that the grant of such applications is within the discretionary powers of the Judge and principles for interference with the exercise of discretion by a judge are settled as well. Whenever a decision is based on the exercise of discretion by a judge, such decision will not be reversed merely because the appeal judges would have exercised the discretion differently if they had been presiding in the court below. On the other hand, the appellate court may reverse such discretion if it finds that the trial Judge has failed to exercise any discretion at all or has exercised it in a way that no reasonable Judge would have exercised, or erred in principle or in law; or took into account irrelevant factors; or has omitted factors which are material to the decision. See: **Mbogo Vs Shah (1968) 1 EA 93**.

Section 8(2) of the Judicature Act which governs references provides that;

> ***"(2) Any person dissatisfied with the decision of a single justice in the exercise of a power under subsection (1) is entitled to have the matter***

determined by a bench of three justices of the Supreme Court which may confirm, vary or reverse the decision".

A reference is thus in essence an appeal from the decision of a single Justice to a panel of three Justices. As such the above principles are applicable to the instant case.

We find grounds one, two, three and five interrelated and we shall resolve them together and then ground four separately.

Grounds one, two, three and five.

The applicant's argument under these grounds is that rule 6(2) of the supreme court rules have a constitutional background and cannot therefore be rendered unconstitutional on the basis that the constitution does not expressly provide for the right to apply for bail pending appeal.

While determining the applicant's application for bail pending appeal, the learned single Justice held as follows:

"Analysis of the Constitutional provisions discussed above has left me in no doubt that Arvind Patel (supra), was not correctly decided and that the whole concept of Courts granting bail pending appeal is unknown to the 1995 Constitution human rights regime. No Article of the Constitution talks about or supports the proposition that the presumption of innocence subsists after conviction of a person with a criminal offence. On the contrary Article 28(3) of the Constitution is explicit that the presumption of innocence is extinguished upon conviction.

Secondly, nowhere does the Constitution provide for the right of a convicted person to apply for bail. As I noted earlier, Article 23(6) (a) which provides for the right to apply for bail only refers to a person arrested in respect of a criminal offence and NOT to a person already convicted of a criminal offence.

I have found no constitutional or legal basis to support the Ruling in Arvind Patel (supra) and other Rulings that have since followed it.

The only provision in the Constitution that caters for deprivation of the person liberty of a convicted person is Article 23(1), which provides as follows:

"No person shall be deprived of personal liberty except in any of the following cases-

(a) in execution of the sentence or order of a court, whether established for Uganda or another country or of an international court or tribunal in respect of a criminal offence of which that person has been convicted, or of an order of a court punishing the person for contempt of court;"

As the underlined text clearly shows, the Constitution permits the non-deprivation of one's liberty "where a person is in custody in execution of the sentence or order of a Court ... in respect of a criminal offence of which that person has been convicted."

I have reached the conclusion on the non-existence of a right to apply or to be granted bail after conviction when I am fully aware of the provisions of Rule 6(2) (a) of the Rules of this Court, which I have already reproduced above. This Rule, which the applicant relied on, expressly gives this Court powers to grant bail pending the determination of the appeal. However, I note that these Rules which were made under the Judicature Act, Cap 13, cannot override the clear provisions of the Constitution I have cited above.

Furthermore, I have also noted that the powers of this Court to hear criminal appeals are laid down under Article 132(2) of the Constitution, which provides as follows:

> *"(2) An appeal shall lie to the Supreme Court from such decisions of the Court of Appeal as may be prescribed by law."*

This Article leaves no doubt in my mind that the mandate of the Supreme Court in criminal matters is restricted to hearing appeals. It is not necessary for me to lay out what hearing and appeal means in detail. It suffices for me to note that this entails the Court examining the grounds of appeal that an appellant has laid out in his or her Memorandum of Appeal and the legal arguments made in support of his or her grounds of appeal should bring out the errors of law he or she contends were made by the Court of Appeal in confirming his or her conviction and/or sentence.

Since court derives its powers and mandate to hear criminal appeals from Article 132(2) the Constitution of Uganda, it therefore follows that this Court only gets ceased(sic) with jurisdiction to hear an appellant challenging his or her conviction either when it is preparing for hearing or when it is hearing and determining his or her appeal. Prior to that, this Court only has jurisdiction to deal with matters directly relating to preparations for the hearing of the criminal appeal or incidental thereto, but no powers to consider the release on bail of a convicted person before the final disposal of his or her appeal. Nothing more, nothing less.

It also follows that this Court cannot and should not assume jurisdiction under the Judicature (Supreme Court) Rules to exercise powers that are not vested in it under the Constitution of Uganda, to enforce a purported right to apply for bail pending appeal of a convicted person to apply and to be granted bail pending the disposal of his or her appeal.

It is therefore my view that when the Court hears an intended appellant, seeking to regain his liberty pending the hearing and disposal of his or her appeal as is the case in the present application, the Court is assuming jurisdiction it does not have under the Constitution of Uganda."

In the most recent decision of this court (**Nakiwuge Racheal Muleke Vs. Uganda, Criminal Application No. 12 of 2020**), this court delivered a well-reasoned and detailed ruling in regard to the constitutionality of rule 6(2) of the rules of this court and the right to apply for bail pending appeal.

This reference also raises the same contentions to be determined by court. In that case, court found as follows: -

"We agree with the learned Justice that there is no express provision in the 1995 Constitution that provides for the right for bail pending appeal. Similarly, it is apparent that no provision expressly prohibits the right to bail pending appeal. However, we note that the Constitution empowers the Parliament of Uganda to enact laws on any matter for the peace, order, development and good governance of Uganda. We also note that the Constitution empowers Parliament to make laws providing for the

structures, procedures and functions of the Judiciary. Articles 79(1) and 150(1) of the Constitution expressly state as follows: -

"79 Functions of Parliament.

(1) Subject to the provisions of this Constitution, Parliament shall have power to make laws on any matter for the peace, order, development and good governance of Uganda."

"150 Power to make laws relating to the judiciary.

(1) Subject to the provisions of this Constitution, Parliament may make laws providing for the structures, procedures and functions of the judiciary."

A clear analysis of the two Articles of the Constitution indicate that much as the Constitution provides for most of the fundamental rights of the people under Chapter 4, it did not conclusively provide for all the rights. The framers of the Constitution bore in mind that need may arise to provide for other rights hence the provisions under Articles 79 and 150 cited above empowering Parliament to make provisions for such rights through Acts of Parliament. It would therefore be a misdirection in law to say that since certain rights are expressly not provided for in the Constitution, they are as good as not in existence. It is equally a misdirection to hold that all Acts of Parliament and subsidiary legislation made thereunder that provide for other rights other than those expressly provided within the Constitution are inconsistent with it.

Section 40 of the Judicature Act Cap.13 provides for the Rules Committee which includes the Chief Justice. The following Section of the same Act stipulates the functions of the Rules Committee which among others includes making rules for regulating the practice and procedure of the Supreme Court, Court of Appeal and High Court and for all other courts in Uganda subordinate to the High Court. The Rules Committee chaired by the Chief Justice therefore has the mandate to make rules by way of Statutory Instruments regulating procedure and practice in all courts and thus the genesis of the Supreme Court Rules that govern the practice and procedure in this court. Rule 2(1) of the Supreme Court Rules provides: -

"2. Application.

(1) The practice and procedure of the court in connection with appeals and intended appeals from the Court of Appeal and the

practice and procedure of the Court of Appeal in connection with appeals to the court shall be as set out in these Rules."

Rule 6(2)(a) of the Supreme Court Rules provides: -

"6. Suspension of sentence, stay of execution, etc.

(2) Subject to subrule (1) of this rule, the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the court may—

(a) in any criminal proceedings, where notice of appeal has been given in accordance with rules 56 and 57 of these Rules, order that the appellant be released on bail or that the execution of any warrant of distress be suspended pending the determination of the appeal;"

We therefore find that much as the Constitution does not expressly provide for the right to apply for bail pending appeal, the Supreme Court Rules do provide for that right. Further, since the rules were enacted to regulate and govern the procedure and practice in this court, Rule 6(2)(a) in particular applies to this case.

As already stated above, we agree that the 1995 Constitution does not provide for the right to apply for bail pending appeal. It does not specifically rule it out either. We also agree that once an accused person is convicted, the presumption of innocence is extinguished. However, we respectfully disagree with the learned single Justice's conclusion that the applicant has no right to apply for bail pending appeal. We find and hold that although the Constitution does not expressly provide for such right, the Supreme Court Rules do provide for it and should therefore be relied on whenever such applications are made to this court.

Further, we do not find Rule 6(2) of the rules of this court inconsistent with the Constitution. The rule simply makes provision for the right to apply for bail pending appeal whose grant is discretionary and differs from case to case because every case presents its own facts and circumstances. This explains why some applications before this court have been granted while others have been unsuccessful.

In the case of ***Arvind Patel****, (supra) Oder, JSC considered several cases to come up with the general considerations for bail pending appeal applications. As discussed above, the Constitution does not provide for the right to apply for bail pending appeal and there was no way the*

learned Justice would have referred to it as there was no clear provision in that regard. The practice has been that whereas there is no written law on the matter before court, case law provides guidance. With due respect to the learned single Justice, we hold that it was an error on her part to conclude that the ***Arvind Patel*** *case was wrongly decided saying that it did not consider clear provisions of the Constitution on bail and those permitting restrictions on personal liberty. The learned Justice in the* ***Arvind Patel*** *case could not have considered the said provisions of the Constitution where they were not applicable to the case before him. Whereas bail is a right and court has discretion, conditions for pre-conviction bail and those for a convict like Patel should be different. In one the applicant is innocent before the law. In Patel and in the instant application, applicants are convicts. All in all, the* ***Arvind Patel*** *case was rightly decided and we uphold it as the proper position of the law."*

We uphold the same position in the above quoted findings of this court. We maintain that the right to apply for bail pending appeal is provided for under rule 6(2) of the rules of this court, which confers powers to this court to hear and determine such applications.

Grounds one, two, three and five are ruled in the affirmative.

Ground four

Under this ground, counsel contended that the applicant was not given an opportunity to be heard on the constitutionality of rule 6(2) before the learned single justice considered the same in her ruling.

We do not agree with the applicant's contention that the learned single justice delved into the constitutionality of rule 6(2) of the rules without according him the right to be heard. What we observe from the findings and analysis of the learned single justice's ruling is that she applied the law to the facts that were before her and came to her decision. There is no element of constitutional interpretation in her ruling. We therefore do not find merit in the above ground and it is hereby dismissed.

Consideration of the applicant's grounds for bail pending appeal.

The applicant's grounds of the application for bail pending appeal are listed on page 3 and 4 of the ruling of the learned single justice as follows: -

I. **The applicant is of good character and a person who can be trusted**

II. **The applicant had complied with the bail terms imposed by the Court of Appeal until the final disposal of the appeal.**

III. **The offences the applicant was convicted of (sic) did not involve personal violence.**

IV. **The applicant is a first offender**

V. **The intended appeal is not frivolous and has high chances of success.**

VI. **There was a possibility of substantial delay. He contended that the applicant had spent 2 years and 8 months in custody as at the time of filing the application, which was almost halfway his sentence of seven years. He further contended that there will be grave injustice occasioned to him if he remained in custody and this court eventually allows his appeal.**

VII. **The applicant has a fixed place of abode at Balintuma Zone Local Council 1 Kiwatule Parish, Nakawa Division, Kampala District within the jurisdiction of this court, where he was renting. He relied on a tenancy agreement and a letter from the local council chairman of the area annexed to his notice of motion, as proof of that the applicant had lived in the area for a while.**

VIII. **The applicant has four sureties who were ready to stand for him. These are (a) his biological father Damian Wamajje, aged**

75 years and a resident of Sawa cell; (b) his sister Namukhura Grace, aged 44 years, a teacher at Musese Senior Secondary School and resident of Sawa Cell; (c) his sister Nandudu Mary, aged 40 years, a teacher at Meryland High School and resident of Nazziba Cell; and (d) his brother in law Okello James, aged 39 years who is a resident of Naggulu.

The grant of bail, whether pending trial or pending appeal, is at the discretion of court, which discretion must be exercised judiciously, with each case being determined on its own merits. See **John Muhanguzi Kashaka Vs. Uganda, (supra); Arvind Patel Vs. Uganda (supra); and Ochepa Godfrey Vs. Uganda, Supreme Court Miscellaneous Application No. 07 of 2020.**

The consideration for release of an Applicant on bail pending appeal hinges on whether there are exceptional and unusual circumstances warranting such release. This is because the Applicant is no longer wholly shielded by the presumption of innocence espoused in Article 28 (3) of the Constitution of Uganda. Secondly, the position is that whenever an application for bail pending appeal is considered, the presumption is that when the Applicant was convicted, he or she was properly convicted.

In the instant application, the presumption of innocence is rebutted by the fact that the High Court and the Court of Appeal have already convicted the Applicant. This infers that there are factual findings by both courts, based on the adduced evidence, that he committed the offences he was charged with, thus placing him outside the ambit of persons envisaged in Article 28 (3) (a) which refers to persons in respect of whom a court of law is yet to make a verdict on allegations against them.

Thus, a person applying for bail pending appeal must be subjected to a more stringent test than one who is not yet convicted.

However, the fact that the law, as implicit in Article 132 (2) of the Constitution, Section 5 of the Judicature Act Cap 13, and Rule 6 (2) of the Rules of this Court, makes provisions for appeal, and for bail pending appeal, infers that the law appreciates the possibility of a conviction being erroneous or the punishment being excessive. Cases of human errors are worldwide.

We have perused the record of this application. We have read and understood the grounds of this application. It was submitted for the applicant that he is a first offender whose appeal has a likelihood of success, that he is of good character and that he has sureties of sound characters. All such factors go to the applicant's credit. The position of this Court, as held in **Kashaka Vs. Uganda (supra)**, is that good character alone can never be enough because there is nothing exceptional or unusual in having good character. Thus factors which go to the applicant's credit, like being a first time offender, or of good character, or a breadwinner of his family, and although he/she may have offered sureties of sound character, all such considerations would recede to the background when weighed with the seriousness of the offence and whether or not there is likelihood that the appeal would succeed.

The likelihood of success of an appeal, would on the face of it, presuppose that court appreciates the merits of the appeal on which the application for bail hinges. However, as a matter of fact, court does not at this particular point in time delve deeply into the merits of the appeal.

It was held in the case of **Arvind Patel (supra)** that: -

> **"the only means by which court can assess the possibility of success of the appeal is by perusing the relevant record of proceedings, the judgment of the court from which the appeal has emanated and the Memorandum of Appeal in question."**

In **Kyeyune Mitala Julius V Uganda, Supreme Court Criminal Application No. 09 of 2016,** it was held that it is impossible to gauge the success of the appeal in the absence of the record of proceedings.

The applicant in this case, attached both the Notice of Appeal and the Memorandum of Appeal. He also annexed the Court of appeal judgment. However, the record of proceedings was not attached. We are therefore unable to determine whether or not the appeal has a likelihood of success in the circumstances.

Section 15 (3) of the Trial on Indictment Act, Cap. 23 defines exceptional circumstances to include: -

"In this section, "exceptional circumstances" means any of the following—

(a) grave illness certified by a medical officer of the prison or other institution or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody;

(b) a certificate of no objection signed by the Director of Public Prosecutions; or

(c) the infancy or advanced age of the accused."

The applicant has not pleaded any of the above circumstances. We emphasize that conditions for bail pending appeal are slightly higher than those required for bail pending trial. The applicant in an application for bail pending appeal has to plead and prove exceptional and unusual circumstance for the grant of his/her application. The applicant has not pleaded and proved exceptional and unusual circumstance for the grant of bail pending appeal.

In the result, we decline to grant the application for reasons discussed above.

Dated at Kampala this.....10th.....day of.....February.....2021.

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ARACH-AMOKO

JUSTICE OF THE SUPREME COURT

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OPIO-AWERI

JUSTICE OF THE SUPREME COURT

570 .....

EZEKIEL MUHANGUZI

JUSTICE OF THE SUPREME COURT.

10/2/22

Delivered by the Registrar