

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA

Criminal Miscellaneous Application No. 05 of 2022

(Arising from Criminal Appeal No. 75 of 2021)

(Arising from Court of Appeal Criminal Appeal No. 317 of 2015)

Mugerwa Dominic1st Applicant

Muhwezi Abias2nd Applicant

Versus

Uganda (URA)Respondent

Ruling of Percy Night Tuhaise, JSC

(Single Justice)

This application was brought under Articles 2 & 126 (2) of the Constitution of the Republic of Uganda, as amended; Section 132 (4) of Trial on Indictment Act Cap 23; Section 40 (2) of the Criminal Procedure Code Act; and Rules 6 (2) and 41 (1) & (2) of the (Supreme Court Rules), for orders that: -

1. The Applicants be released on bail pending the hearing and determination of Criminal Appeal No. 75 of 2021 before this Honourable Court.



The grounds of this application are contained in the Notice of Motion and in the affidavits in support of the application sworn by the respective Applicants, but briefly, are that: -

1. The Applicants were on 6th November 2015 convicted by the High Court Anti - Corruption Division of the offences of Abuse of Office contrary to Section 11 (1) of the Anti-Corruption Act 2009, Causing Financial Loss contrary to Section 20 (1) of the Anti-Corruption Act 2009, False claims by Officials contrary to Section 24 of the Anti-Corruption Act.
2. That the Applicants being dissatisfied and aggrieved with the conviction sentence orders, filed an Appeal in the Court of Appeal of Uganda *vide* Criminal Appeal No. 317 of 2015.
3. The Court of Appeal upheld the conviction for Abuse of office contrary to section 11 (1) of the Anti- Corruption Act 2009, Causing financial loss contrary to Section 20 (1) of the Anti-Corruption Act 2009, and False claims by officials contrary to Section 24 of the Anti- Corruption Act and also upheld the sentence of 5 years, 10 years and 2 years respectively and orders not to hold public offices for 10 years.
4. That the Applicants, appealed to this Honorable Court against the conviction and sentence under Criminal Appeal No. 75 of 2021 pending hearing and final determination.
5. That the Applicants are first offenders and the offences of abuse of office, causing financial loss and false claims by officials they were convicted of do not involve personal violence. vva
6. That the Applicants' Appeal is not frivolous, or vexations, it has merits with great chances of success.
7. That the Applicants were granted bail at the High Court and Court of Appeal and throughout the trial and on Appeal, they

did not at any time skip until the determination of both hearings.

8. That there is a possibility that the Applicants' Appeal will take some time before it is heard and determined.
9. That if the Applicants bail is not granted, the Appeal shall be rendered nugatory, because a substantial part of the sentence, shall have been served.
10. That the Applicants are suffering from chronic illnesses which medical conditions require routine specialized services that are not available and cannot be managed in prison environment.
11. That the Applicants have substantial sureties who are willing and ready to stand for them.
12. That the Applicants will not abscond and will abide by the conditions set by Court and will turn up to prosecute his Appeal pending before this Honorable Court.
13. That the discretionary jurisdiction of the Court to grant bail be exercised judiciously in favour of the Applicant.

The application was opposed by the Respondent who filed an affidavit in reply sworn by Barbra Nahone Ajambo, an Advocate employed with Uganda Revenue Authority Legal Services and Board Affairs Department.



Representation

At the hearing of this application, the Applicants were represented by Mr. Turyamuheebwa Francis, while the Respondent was represented by Mr. Lumuria Thomas Davis, an Officer

Prosecutions, Uganda Revenue Authority (URA). The Applicants were both present in Court during the hearing of this application.

Background

The brief background of this application is that the Applicants were employed by URA. The first Applicant was a Supervisor while the second Applicant was a Revenue Officer. Their duty was to remit to audit, verify and approve (in the case of the first Applicant) tax payers' claims for VAT refund. In 2014, they approved impugned payments leading to the loss of six billion Uganda shillings to URA.

The Applicants were arrested on the 16th day of March 2015. On the 17th of March 2015, they were charged in the High Court Anti-Corruption Division, with 9 counts of abuse of office, 9 counts of causing financial loss, and 8 counts of false claims by officials. On the 6th day of November 2015, Mugamba, J (as he then was) convicted each of the Applicants of all the counts as charged. He sentenced each of them to imprisonment for 5 years, 10 years and 2 years, for the respective offences.

The Applicants appealed to the Court of Appeal against the whole decision of the trial Judge. On the 3rd day of December 2021, the appeal was dismissed and the sentence confirmed by the Court of Appeal. Aggrieved by the decision of the Court of Appeal, the Applicants further appealed to this Court.

In this application the Applicants seek to be released on bail pending the hearing of that appeal.

Applicants' Submissions

Learned Counsel for the Applicants submitted that each of the Applicants has a fixed place of abode, which is one of the requirements in the Constitution (Bail Guidelines for the Courts of Judicature) (Practice) Directions, 2022, and as held in the case of **Arvind Patel Vs Uganda, Supreme Court Criminal Application No. 1 of 2003**.

Counsel also submitted that the Applicants are law abiding citizens with no previous criminal record. He relied on the Local Council (LC) letters from their respective areas of residence, annexed to their respective affidavits, to support this fact. He contended that, because of their good moral conduct and the fact that they have no other criminal record, they are likely not to commit any other offence if released.


Counsel submitted that the Applicants were previously released on bail both in the Court of Appeal and the High Court, that they religiously attended court whenever they were required to attend. He relied on the bail bond forms on record. He submitted that, given the Applicants' history of attending court even when they had been released on bail, they will still be in position to attend the hearing in the Supreme Court if released.

Counsel further submitted that, given the nature of handling Supreme Court matters, there is a high possibility that there will be delay in disposing of the Applicants' appeal since there has not been progress in having it disposed of. He argued that the fact that the instant application, which was filed on 16th August 2022, had

also taken long to be fixed for hearing, shows that the schedule of this Court is quite busy, and that there will be likely delay which will affect the rights of the applicants.

Counsel submitted that the Applicants, who were sentenced to 5 years, and who have so far served 3 years, are likely to serve the sentence substantially or even to completion before the appeal is heard and disposed of. He contended that the grounds of appeal raised by the Applicants in their memorandum of appeal are of a serious nature, that, in the event that the appeal succeeds, it would be prejudicial to them to have served the full sentence only to come out successful in the appeal.

Counsel referred this Court to the medical reports on record authored by the Doctor from Murchison hospital. He submitted that the health condition of the Applicants would require them to go for better treatment out of Murchison Bay health facility.


Counsel introduced three sureties for each Applicant, namely Rosemary Nagujja Mugerwa (wife), Kayabula John (cousin) and Kiwanuka John Kasule (brother-in-law), for the first Applicant; and Muhanguzi Obadiah, (brother), Mwesigye Francis and Deus Kairu (former workmate), for the second Applicant. 

Counsel cited the decisions in **Alenyo Mark Vs Uganda, Supreme Court Miscellaneous Application No. 05 of 2015**; and **Kyeyune Mitala Vs Uganda, Supreme Court Miscellaneous Application No. 04 of 2017** and submitted that the Applicants still enjoy the right to presumption of innocence.

Counsel prayed that this Court be pleased to find that the Applicants are fit and proper persons to be released on bail, pending the hearing of the appeal.

Respondent's Submissions in Reply


Learned Counsel for the Respondent submitted in reply that the Applicants' counsel was speculative regarding his submissions that there was a possibility of delay in hearing the appeal. He contended that the Applicants will not have already served the substantial part of the sentence by the time their appeal is heard by this Court. He also referred this Court to the bail bonds attached to the Applicants' respective affidavits and submitted that the Applicants have been in custody for 1 year and 9 months, and not 3 years as submitted by the Applicants Counsel.

Counsel submitted that though the Applicants annexed the Notice of Appeal and Memorandum of Appeal to the affidavits supporting the application, the record of appeal was not annexed to the same affidavits to facilitate the fast tracking of the appeal. He relied on this Court's decisions in **Mugerwa Dominic & Muhwezi Abias Vs Uganda, Supreme Court Miscellaneous Application No. 15 of 2021**, and **Henry Bamutura Vs Uganda, Supreme Court Miscellaneous Application No. 19 of 2019**, where it was held that a missing record will act against the Applicants. 

Counsel also submitted that much as the Applicants complied with the bail terms while at the High Court and the Court of Appeal, the circumstances have since changed since the Applicants were convicted by the High Court and Court of Appeal. He argued that

they are, therefore, a flight risk; and that they no longer enjoy the presumption of innocence as contended by the Applicants' Counsel.

Counsel further submitted that, much as the offences the Applicants were convicted of do not involve violence as regards their character, the offences of abuse of office and causing financial loss are serious offences involving huge amounts of money in terms of value added tax to a tune of 6 billion shillings. He argued that this goes to the root of revenue mobilization in this country.

Regarding the Applicants' health status, Counsel referred this Court to the Applicants' medical reports and submitted that the medical doctor at Murchison Bay Hospital has not stated that their conditions cannot be handled by that hospital. He contended that the Applicants are young men aged 42 and 39 years respectively, and that the prison authorities or doctors can handle them. 

Counsel further submitted that though the Applicants submit that the grounds of appeal are on points of law, the memorandum of appeal attached to the application shows that, being a second appeal, the Applicants want this Court to re-appraise the evidence and come to its own conclusions, yet they have not attached the record of appeal to this application to facilitate this. In addition, he submitted that only 3 pages of the judgment of the Court of Appeal were attached to the application by the Applicants, which would make it difficult to determine whether the appeal before this Court can succeed.

Regarding the sureties presented by the Applicants, Counsel submitted that the introduction letters for the sureties of the first Applicant were obtained in May 2022, that this being the month of March, 2023, there is a lapse of time, and one cannot be sure whether the sureties still reside at the same addresses. Counsel also contended that there is need to verify the particulars of the substitute sureties of the second Applicant.

Counsel submitted, by way of conclusion, that the Applicants had not demonstrated exceptional circumstances to warrant their release on bail. He argued that since the two have been convicted by two courts, the temptation to flee or to abscond is too high.

He prayed that the Applicants' bail application be denied.


Applicants' Submissions in Rejoinder

Regarding the character of the Applicants and the nature of offences, learned Counsel for the Applicants referred this Court to page 22 of the record, regarding sentencing at the High Court. He submitted that the Applicants were not ordered by court to refund or to pay the monies lost. He also submitted that the monies lost were recovered from a third party, but that court went ahead to convict and sentence the Applicants, which they are disputing in their appeal to this Court.

Regarding the medical reports or health condition of the Applicants, Counsel relied on the authority of **Kiwanuka Kunsu Stephen Vs. Uganda, Supreme Court Criminal Application No. 4 of 2022**, to support his argument that much as the Medical Doctor

did not specifically state that the Applicants' conditions could not be handled within the Murchison Bay Health facility, they could still be released.

Regarding the Respondent's submissions on absconding from jurisdiction from Uganda or from Court, Counsel submitted for the Applicants that even when High Court had convicted them and there was an appeal pending in the Court of Appeal, they still obeyed or respected the bail terms, and they fully attended the entire trial.

Regarding the sureties' introduction letters, Counsel submitted that the LC letters on record were still relevant because that is where the sureties still reside, and that the Respondent has always had the time to verify the LC letters. Regarding the substituted sureties, Counsel had no objection to the Respondent's Counsel verifying the information contained in their identification documents or LC letters. 


Regarding the Respondent's submissions that there is no record of appeal, Counsel submitted that a record of appeal was filed, though attaching 3 pages of the Court of Appeal judgment to the application could have been an oversight on the part of the Applicants. He contended that the entire judgment is however on the court record.

Regarding the sentence served by the Applicants, Counsel submitted that he had been guided by the Applicants that from November to June they spent 8 months, and from December to March, it is calculated as 15 months, that this gives a total of 2 years;

and that, according to the prisons officials' computation, the time the Applicants have spent in prison adds up to 3 years.

Consideration of the application

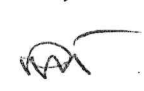
Before delving into the merits of this application, it is pertinent to state that I have noted from the case of **Mugerwa Dominic & Muhwezi Abias Vs Uganda, Supreme Court Miscellaneous Application No. 15 of 2021** cited by the Applicants, that the Applicants had earlier unsuccessfully applied for bail pending appeal in this Court. This application was heard by a Single Justice (Tibatemwa - Ekirikubinza JSC) who delivered a ruling on 27th January 2022.

It is very clear from the record of this application that the Applicants are not seeking to challenge or vary the decision of the Single Justice, neither are they making a reference, nor stating that they are aggrieved or dissatisfied by the decision of the Single Justice. They are clearly making a fresh application. This situation is accepted in our court system, as was stated by **Opio - Aweri, JSC (RIP), (Single Justice), in Kyeyune Mitala Julius Vs Uganda, Supreme Court Miscellaneous Application No. 4 of 2017.** 

On the merits of this application, Rule 6 (2) (a) of the Judicature (Supreme Court Rules) Directions, hereinafter referred to as the "Rules of this Court", which applies to applications for bail pending hearing and determination of an appeal in this Court, states:-

“(2) Subject to sub rule (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 a 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;”

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. However, the principles which apply to applications for bail pending appeal are different, and are more stringent, than those applicable to applications for bail pending trial. See **Arvind Patel Vs Uganda, Supreme Court Criminal Application No. 1 of 2003.** 

The consideration for release of an Applicant for bail pending appeal hinges on whether there are exceptional and unusual circumstances warranting such release. This is because such 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. A presumption, however, can be rebutted by factual evidence.

In the instant application, the record shows that the High Court and the Court of Appeal have already convicted the Applicants. Thus, there are factual findings on record by the said courts, that

the Applicants committed the offences they were charged with. The same record shows, however, that the Applicants filed a notice of appeal under Rule 6 (2) (a) of the Rules of this Court, which was received in this Court on 6th December 2021. This is evidenced by the copies of the Applicants' Notice of Appeal to this Court annexed as G to their respective affidavits in support of the application.

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.

Thus, in **Alenyo Marks (A3) Vs Uganda, Supreme Court Miscellaneous Application No. 05 of 2015**, Mwendha JSC (Single Justice) stated;

"As long as the appeal lies the presumption of innocence exists this is so because courts can make errors because they are manned by human beings."

In **Arvind Patel Vs Uganda (supra)**, this Court laid down guidelines to be considered to justify the grant of bail pending appeal, that is:-

- i) the character of the Applicant;
- ii) whether the Applicant is a first offender or not;
- iii) whether the offence of which the Applicant was convicted involved personal violence;

- iv) the appeal is not frivolous and has a reasonable possibility of success;
- v) the possibility of substantial delay in the determination of the appeal;
- vi) whether the Applicant has complied with bail conditions granted after the applicant's conviction and during the pendency of the appeal (if any).


The foregoing guidelines have been adopted or incorporated under Practice Direction No.19 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022.

Before setting out the general considerations to apply for bail pending appeal in the **Arvind Patel** case, **Oder JSC**, cited with approval, the statement of Harris J in **Chimambai Vs Republic (No. 2) [1971] EA 343**, that;

"The principle damage against which the court must guard in granting of bail pending appeal, is of course, that the appellant may in the meantime either abscond or commit further offences, while, unlike the case of granting bail before trial, there is usually no damage of his destroying evidence or interfering with witnesses. In regard to the possibility of his absconding a material consideration is the length of the term of imprisonment against which the applicant is appealing, for clearly the longer the term, the more likely is he tempted to abscond and possibly to leave the country...Nevertheless it seems to me that this may be more a question of conditions to be imposed rather than one of granting of bail itself..." (underlined for emphasis).

The foregoing, in my considered opinion, is an overriding factor to be judiciously considered by court alongside what the applicant will have presented to court to justify grant of bail pending appeal. It boils down to applying the main criteria for granting bail pending appeal, which is that the court must be satisfied that the appellant shall comply with the bail conditions and be available to attend court. See **Kiwanuka Kunsu Stephen Vs Uganda (supra); Kyeyune Mitala Vs Uganda (supra)**.


I will first consider the character of the Applicants who, through their affidavits and submissions, have presented themselves to this Court as law abiding, breadwinners of their respective families, and first offenders who complied with previous bail conditions set by the two lower courts.

The affidavit evidence on record shows that the first Applicant is a 42 year - old male, a first offender, a father of four children of school going age, the breadwinner of his family, and with a fixed place of abode (not renting) at Senge, Nabweru, Wakiso district. The second Applicant, also by affidavit evidence, is revealed to be a 38 year – old male, a first offender, a father of four children of school going age, the breadwinner of his family, and with a fixed place of abode (renting) at Seguku, Wakiso District. 

The first Applicant was described by his area LC 1 Chairman, Walakira Robert, as law abiding and co-operative, as revealed by the LC introductory letter, annexed as J to his affidavit in support of the application. The second Applicant is also described as a responsible law abiding member of the community, as revealed in the LC introductory letter of Kiwuwa Kenneth his LC 1

Chairperson, which letter is annexed as J to the second Applicant's affidavit in support of the application. This evidence was not challenged by the Respondent.

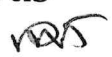
The Applicants also relied on the ground that they were both granted bail pending trial at the High Court and bail pending appeal at the Court of Appeal, and they complied with the bail conditions set by the lower courts. Their Counsel submitted that under the bail granted by the Court of Appeal, the Appellants still obeyed the bail terms and attended court even though they had already been convicted. The Respondent's Counsel did not challenge this submission, but he contended that since the Applicants have been convicted twice by the High Court and the Court of Appeal, they were a flight risk and could abscond from this Court's jurisdiction.

The Applicants aver in paragraphs 7 of their respective affidavits in support of this application that on 30th day of June 2016, they were granted a non-cash bail, and they never defaulted. The first Applicant went further and averred that he was ordered to hand in a land title and passport, which he has not claimed (title) from the lower court to date. 

The record shows that after their conviction by the High Court the Appellants were granted bail by the Court of Appeal on 30th June 2016. From that date to 3rd December 2021, which is a period of over five years, the Applicants were out on bail. Annexures **B** and **E** to the respective Applicants' supporting affidavits show that the Appellants consistently complied with the bail conditions set by both courts. There is nothing on record to indicate that the

Applicants acted contrary to the bail conditions set out by the lower courts upon them, neither did the Respondent raise any such situation before this Court. This consideration would be in favour of the Applicants.

The Applicants aver in paragraphs 19 of their respective affidavits that they do not have any previous record of convictions which the prosecution also agreed to in the lower court. This was not disputed by the Respondent, neither does the record show anything to the contrary. This would also be in favour of the Applicants.

The Applicants further aver, in paragraph 19 of their respective affidavits, that the offences for which they were convicted are not violent in nature. Learned Counsel for the Respondent conceded in his submissions that the offences the Applicants were convicted of do not involve violence. He however submitted that the offence of abuse of office and causing financial loss are serious offences, which, in the Applicants' case, involved loss of large sums money in terms of value added tax, to a tune of 6 billion shillings, which affects the revenue mobilization in this country. It was submitted for the Applicants, in rejoinder, however, that the court did not order the Applicants to compensate the money, given the involvement of a third party from whom the lost money was eventually recovered. 

In considering the violent or non-violent nature of offences, *Tibatemwa - Ekirikubinza, JSC (Single Justice)*, in **Henry Bamutura Vs Uganda (supra)** stated that in matters of causing financial loss to the government, the consideration should be the extent of loss

to the tax payer and the potential implication for the country's development.

In the instant application, the record reflects that the offences of abuse of office and causing financial loss which the Applicants were convicted of are serious offences involving huge amounts of money in terms of value added tax, to a tune of 6 billion shillings. Though this undoubtedly goes to the root of revenue mobilization in this country, in the circumstances of this application where, according to the trial court, a third party was involved, and where a compensation order was accordingly not made against the Applicants, the enormity of the situation is somehow toned down or mitigated, which could, to a limited extent, be in favour of the Applicants. I have not considered the submissions by the Applicants' counsel that the loss of funds caused was eventually recovered from a third party, since it is not supported by evidence.

The Applicants further aver, in paragraphs 22 of their respective affidavits, that there is a possibility of substantial delay in the determination of their appeal. They contend that they were informed by their lawyers and M/S Justice Defenders, Murchison Bay Prison, that because of the systematic delays to hear the appeal, they are likely to serve a substantial portion of their sentence before the appeal is determined which cannot be atoned.

The Applicants' Counsel, in his submissions, only made reference to the dates between filing this application to its hearing date as proof of the appeal being delayed.

In the circumstances of this case, the "delay" in disposing of the appeal should be assessed in light of whether there is a real risk

that the sentence, or a considerable portion of it, will have been served before the appeal is heard.

The record shows that the Applicants are serving a concurrent sentence of 5 years, 10 years and 2 years respectively for the offences of Abuse of office contrary to Section 11 (1) of the Anti-Corruption Act 2009; causing financial loss contrary to Section 20 (1) of the Anti- Corruption Act 2009; and False claims by officials contrary to Section 24 of the Anti- Corruption Act. The sentences run from the date of their respective convictions by the High Court on 6th November 2015.

There were contradictions in the submissions of both Counsel regarding the part of the sentence the Applicants have served. The record shows that the Applicants have been in police custody for the period between 16th March 2015 to 20th March 2015 (5 days), 5th November 2015 to 30th June 2016 (7 months and 25 days) and the current period of 3rd December 2021 to March 2023 (one year and 3 months). This means the Applicants have served about 1 year and 11 months of their term of imprisonment. Given that the Applicants' longest sentence is 10 years' imprisonment for causing financial loss contrary to Section 20 (1) of the Anti- Corruption Act 2009, the sentence will not have expired by the time the appeal is heard.

As stated in **Kashaka Vs Uganda (supra)**, delay can only alone be an unusual or exceptional circumstance if it is unusual itself.

There is no basis, in the circumstances of this application, therefore, for speculating, as the Applicants and their Counsel did, that the

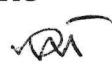
Applicants' appeal will be subjected to an unusual delay. This consideration would therefore not be in favour of the Applicants.

It is also the Applicants' contention that the appeal is not frivolous and has a reasonable possibility of success. This is rebutted by the Respondent who maintains that the fact that the Applicant's conviction by the High Court, and the upholding of the conviction by Court of Appeal, shows that the Applicant's appeal has little or no chance of success.

The likelihood of success of an appeal, would 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 Vs Uganda (supra)**, it was held that it is impossible to gauge the success of the appeal in the absence of the record of appeal. 

The record of this application contains the Notice of Appeal, the Memorandum of Appeal, the amended Memorandum of Appeal, the affidavits and their annexures, plus copies of the authorities sought to be relied on by the Applicant. The judgment of the Court of Appeal is annexed as F to the Applicants' respective supporting

affidavits. The said annexures contain only pages 1, 47 and 48 of the judgment, covering mainly the aspect of the dismissal of the appeal and the sentence. The entire judgment of the High Court is annexed as C to the second Applicant's supporting affidavit.

Learned Counsel for the Applicants submitted that a record of appeal was filed. The record, however, shows no indication of a record of appeal having been filed in this application. Learned Counsel for the Respondent cited the decision in **Mugerwa Dominic & Muhwezi Abias Vs Uganda (supra)**, involving the same Applicants, where court re-echoed its position in **Henry Bamutura Vs Uganda (supra)**, that a missing record will act against the Applicants since the likelihood of the appeal succeeding cannot be exhaustively evaluated. 


In the instant application, the lack of the relevant record of appeal and the scanty information on the judgment of the Court of Appeal from which the appeal to this Court arises, would not place me in a position to assess the possibility or otherwise of the success of the appeal, or to determine whether the appeal is frivolous or not. This consideration would not favour the Applicants.

The Applicants also seek to rely on their medical or health condition to seek this Court's discretion to grant them bail pending appeal. This consideration is not listed as a consideration for bail pending appeal under Practice Direction No.19 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022, which could have been an oversight since it is mentioned under Practice Direction No.13 (1) (e) of the same Directions.

The record shows that the Applicants were both examined by Dr. Kakoraki Alex, a Medical Superintendent at Murchison Bay Hospital, who submitted a medical report for each Applicant.

The medical report in respect of the first Applicant reveals that he suffers from hypertensive heart disease, diabetes mellitus, chronic gastritis (with a possibility of peptic ulcer disease) and gross obesity. He has a history of having been admitted in Nsambya Hospital in Diabetic coma 5 years ago with a left diabetic foot for 10 days. The doctor noted that;

“these are chronic health conditions which are unpredictable especially with a past history of diabetic coma.”

Regarding the second Applicant, Dr. Kakoraki noted that he suffers from bronchial asthma, hypertensive heart disease and chronic gastritis. He also noted that that these are chronic health conditions which are not curable. 


The Applicants' medical or health conditions were not challenged by the Respondent, but, through the Affidavit in reply of Barbra Nahome Ajambo, the Respondent stated that the Applicants did not demonstrate to this Court that the prison doctors have failed to manage the Applicants' medical conditions.

The Applicants have not availed this Court any evidence showing that Murchison Bay Hospital, lacks capacity to provide adequate medical treatment for their ailments while in prison. Further, the medical reports do not disclose any illness in need of urgent

attention. This consideration would therefore not favour the Applicants.

Regarding the substantiality of sureties, each of the two Applicants presented three sureties to this Court.

The sureties for the first Applicant were presented as:-

1. Rosemary Nagujja Mugerwa, aged 42 years, a spouse, NIN No. CF790521032E7C, telephone contact number 0772664469, a resident of Ssenge LC1 Naluvule parish, Wakiso District, whose copies of her national identity card, marriage certificate, and LC 1 introduction letter were annexed to the first Applicant's affidavit in support of the application, as **L**, **M** and **N** respectively. 
2. Kayabula John, aged 59 years, a cousin, a civil servant at Makerere University, NIN No. CM62068102CAQJ, telephone contact number 0772442807, a resident of Kiyanja Cell, Kyengera Town Council, whose copy of his national identity card, employment identity card, and LC introduction letter are annexed to the Applicant's supporting affidavit and marked **O**, **P** and **Q** respectively.
3. Kiwanuka John Kasule, a brother in law, civil servant, Principal Matrologist, UNBS, NIN No. CM680321099VC, telephone contact 0772431654, resident of Nazziba Cell 11, Seguku Ward, Ndejje Division, Wakiso District, whose copy of his national identity card, employment identity card and LC 1 introduction letter are annexed to the first Applicant's supporting affidavit as **R**, **S** and **T** respectively.

The sureties for the second Applicant were presented as:-

1. Muhanguzi Obadiah, aged 38 years, a brother, NIN No. CM830841004NEC, telephone number 0782424196, a resident of Kimanyi village Kira Division, Wakiso District, whose copy of his national identity card, employment identity card and LC 1 introduction letter is annexed to the second Applicant's supporting affidavit as K, L and M respectively.
2. Mwesigye Francis, aged 34 years, NIN CM8904510474PC, a resident of Kisaasi Central Zone, Kyanja Parish, Nakawa Division.
3. Deus Kairu, aged 63 years, NIN CM691011054HPA, a workmate, resident at Kazinga Zone LC 1, Kiwatule Parish, Nakawa Urban Council, employed as Operations Manager at Atom Outdoor Ltd.

The second Applicant's affidavit mentions only Muhanguzi Obadiah as a surety. The other two, Mwesigye Francis and Deus Kairu, were substitute sureties for Engineer Buhanda Brian and Ahaabwe John, who are mentioned in the second Applicant's supporting affidavit. This Court directed that the two substitute sureties appear before the Court Registrar and present their identification documents for verification.

The record shows that, indeed, the two substitute sureties did appear before the Registrar of this Court who verified their identification documents. The record also shows that the Respondent's counsel did not attend the verification of the sureties when they appeared before the Registrar of this Court. However, in a letter signed for a one Barbra N. Ajambo, Ag. Assistant

Commissioner Litigation, addressed to the Deputy Registrar of this Court and dated 5th April 2023, reference number **URA/LIT/13.1(a)**, which is on record, the Respondent stated that it had verified the sureties' credentials, and that it did not object to the two individuals being admitted as sureties.

Regarding the first Applicant, they are the same sureties who represented him in the lower courts. I am of the considered opinion that their relationship with him indicates they are capable of influencing him to comply with bail terms.

Regarding the second Applicant, while Engineer Buhanda Brian and Ahabwe John stood surety for him at the two lower courts, in this Court they have been substituted by Mwesigye Francis and Deus Kairu. Muhanguzi Obadiah stood surety for him at the Court of Appeal, and continues to stand surety for him in this Court.

All the sureties attended court during the hearing of this application. They would each, in my considered opinion, based on the evidence and the submissions on record, qualify as substantial sureties capable of influencing the second Applicant to comply with bail conditions.




This consideration would be in favour of the Applicants.

In **Arvid Patel Vs Uganda (supra)**, it was held that not all conditions for bail have to exist, that two or three can suffice since each case is decided on its own facts and circumstances.

As stated above, bail is a discretion of Court, and each case depends on its own circumstances, though, for bail pending appeal, there must be exceptional and unusual circumstances.

Thus though not all the considerations raised by the Applicants are in their favour, I, on grounds of the good character of the Applicants, including their having been shown to be first offenders, their having previously complied with bail conditions granted by the lower courts, and their having presented substantial sureties, order that they be released on bail pending appeal, on the following stringent conditions:-

- 1) Each of the Applicants to deposit in this Court Uganda shillings 10,000,000/= (ten million only) in cash.
- 2) Each of the sureties for the respective Applicants to bind themselves with the sum of Uganda shillings 50,000,000/= (fifty million only) not cash. 
- 3) The Registrar of this Court shall cause the transfer of the Applicants' security of properties as well as their passports which they deposited in the lower court, from such lower court, or from the Applicants, whichever is applicable, to the custody of this Court until the appeal has been determined.
- 4) Each of the Applicants to report to the Registrar of this Court on every last working day of every month, until the appeal is disposed of, or until this order is varied.
- 5) The Registrar of this Court to fix the appeal for disposal as soon as practicable.

Dated at Kampala this.....16th.....day of May 2023.

.....

Percy Night Tuhaise
Justice of the Supreme Court

The ruling delivered as directed by
the 11 members
of the bench