

UGANDA / JUDGMENT

Bamutura v Uganda [2020]

UGSC 2 (19 March 2020)

[2020] UGSC 2

COURT

Supreme Court of Uganda

BEFORE

Tibatemwa-Ekirikubinza, JSC

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IN THE REPUBLIC OF UGANDA AT THE SUPREME COURT OF UGANDA AT KAMPALA
MISC. APPLICATION NO. 19 OF 2019

BETWEEN

HENRY BAMUTURA ::::::::::::::::::::::::::::::

AND

UGANDA:::::::::::::::::::::::::::: EXAMPLE RESPONDENT

[An application for bail pending appeal arising from Criminal Appeal No.77 of 2019 which arose from the decision of the Court of Appeal at Kampala (Musoke, Obura and Madrama, JJA) dated 2nd December, 2019 in Criminal Appeal Nos. 723, 734, 735 & 742 of 2014 which in turn arose from Criminal case No. 47 of 2012 of the High Court at Anti-Corruption Division.]

Representation:

At the hearing, the applicant was represented by Mr. Kato Ssekabanja of C/O Ssekabanja & Co. Advocates, Mr. Wandera Ogalo and Mr. 25 Moses Opio.

The respondent was represented by Ms. Harriet Angom -Principal Senior State Attorney.

BEFORE: HON. JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA, JSC. 30

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RULING

This application was brought by a Notice of Motion under **Rule 6(2)(a)**, 43 (1), (2) and 44 of the Supreme Court Rules wherein the applicant Bamutura Henry prayed for orders that he be granted bail pending the hearing and determination of his appeal in Criminal Appeal No.77 of 2019.

The grounds upon which the motion is premised are that:

- a) The applicant has filed a Notice of Appeal in this Court and his appeal has high chances of success.
- b) The appeal may not be heard without substantial delay.
- c) There are existing grounds for the grant of bail pending appeal like substantial sureties, permanent place of abode within the jurisdiction of Court and possession of valuable property sufficient to secure his attendance in court.
- d) The applicant was previously granted bail by the High Court as well as the Court of Appeal and complied with all the bail terms.
- e) The offences with which the applicant was charged and convicted did not involve personal violence.
- f) The applicant suffers from chronic illness of diabetes and hypertension which require serious medical attention.
- g) The applicant is legally married with seven children of school going age and lives with 10 dependants who need his care and attention.

Furthermore, the applicant swore a supplementary affidavit in support of the motion containing the following grounds:

- h) That the applicant received a medical report from Luzira 30 Murchison Bay Hospital dated 16th December 2019.

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- i) That prior to the medical report from Luzira Murchison Bay Hospital, the applicant had obtained a medical report from his personal Doctor, Prof. Otim Mercel of the Kadic (Kampala Diabetes Centre) outlining his health condition.

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- j) That the applicant was previously granted bail by the Court of Appeal while basing also on the medical report from Murchison Bay Hospital.

- k) That the appeal is not frivolous and there are serious issues for consideration as can be discerned from the proposed Memorandum of Appeal and the judgments of the lower court. Furthermore, that there is likelihood of delay in hearing the said appeal.

The respondent filed an affidavit in objection to grant of bail sworn by Josephine Namatovu, Assistant Director of Public Prosecutions in 20 the office of the Director of Public Prosecution, as follows:

- 1) The appeal has no likelihood of success since the grounds of appeal that the applicant seeks to rely on in his second appeal are similar to the grounds he raised in the lower court and were dismissed.
- 2) That there is no likelihood of delay in hearing of the intended appeal.
- 3) That although the applicant has no previous criminal record, 30 the offences with which the applicant was convicted are serious having resulted into financial loss of USD 1,719,454.58 to the Government of Uganda.
- 4) The circumstances under which the applicant complied with the 35 bail terms in the Court of Appeal have changed following dismissal of his appeal by the Court of Appeal.

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- 5) That no evidence has been adduced that the medical condition of the applicant cannot be managed by the Prisons Health facility.
- 6) That it is in the interest of justice that the applicant is denied bail pending appeal and instead, the appeal be expeditiously heard and disposed of.

Background:

The applicant – Bamutura Henry was a Principal Accountant at the Ministry of Local Government. The Ministry had been tasked with the responsibility of availing every Local Council Chairperson at the village and Parish level with a bicycle to aid their transportation in carrying out Government duties.

The Ministry organized for the purchase of the said bicycles and Bamutura was part of the initial planning team.

The Evaluation Committee recommended Amman Industrial Tools 20 and Equipment Ltd (AITELE) as the best evaluated bidder on grounds that it had the minimum capacity and past experience. AITELE was therefore awarded the contract to supply 70,000 bicycles. The contract was signed by Mr. John Kashaka who was the Permanent Secretary of the Ministry at the time. 25

AITEL opted to use Letters of Credit as a payment option and demanded a down payment in the sum of USD 1,719,454.54. It is a fact on record that when the Letter of Credit was opened, there were amendments that needed to be made and that Bamutura met with the Accounting Officer and agreed to make changes to allow for partial delivery of the bicycles.

On 27th December 2010, Bamutura was called by the Permanent Secretary in the presence of his supervisor and the Accounting Officer to sign the amendment which he did. Subsequently, on 3rd March 2011, Bamutura received instructions from the Under

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Secretary and the Accounting Officer directing him to initiate $\$S$ payment.

However, in his defence Bamutura testified that by the time payment was authorized, he was no longer in control of the money because when the Letter of Credit was opened on 23rd December 2011, all the money had been removed from the ministry of Local Government accounts and transferred to Bank of Uganda.

The prosecution alleged that the Evaluation Committee did not properly evaluate the bids and improperly approved AITEL as the best evaluated bidder. Furthermore, that the Evaluation Committee had submitted AITEL's bid as joint venture yet it was not. Also that there had been amendment to the solicitation documents as well as the final contract awarded without approval of the Contracts committee. Due to the bungled up procurement process, the bicycles were never supplied.

Subsequently, Henry Bamutura was indicted for causing financial loss C/S.20 (1) of the Anti-corruption Act, 2009.

The High Court Judge found that the conduct of the evaluation process was flawed from the moment AITEL was smuggled on to the list of eligible bidders; AITEL having been 6-8 weeks old at the time of the bid and did not have any demonstrable experience or capability to deliver on a contract of such magnitude. Furthermore, that Bamutura had knowledge of the fact that he had initiated payment against discrepant documents. That therefore, Bamutura ought to have known that authorizing the payment of USD 1,719,454.58 on discrepant solicitation documents was likely to cause financial loss.

The High Court Judge convicted Bamutura and sentenced him to 10 years and 10 days imprisonment and also ordered him to refund USD 1,719,454.58.

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Dissatisfied with the decision of the High Court, Bamutura appealed $\overline{5}$ to the Court of Appeal against both the conviction and sentence. In a decision of 2:1, the Court of Appeal upheld Bamutura's conviction as well as the sentence.

Being dissatisfied with the decision of the Court of Appeal, Bamutura lodged an appeal in this Court vide Criminal Appeal No. 77 of 2019 10 from which the application for the grant of bail pending appeal arises.

Applicant's submissions

Counsel reiterated the grounds in the applicant's Notice of Motion which I have reproduced earlier in this Ruling. He submitted that the guiding conditions for the grant of bail pending appeal are set out in 15 Arvind Patel vs. Uganda¹ and followed in David Chandi Jamwa vs. Uganda². They include: the character of the applicant, one being a first offender, reasonable possibility of success of the appeal, substantial delay in hearing the appeal and whether the offence with which the applicant was convicted involved personal violence. 20

In regard to the character of the appellant, counsel submitted that the applicant has no previous criminal record and the offence he was convicted of did not involve personal violence. That he is also married with 7 children (3 of whom are minors) who depend on him as a sole breadwinner. Furthermore, that the applicant has a fixed place of abode at Naguru Plot 1 Makajja place within the jurisdiction of Court. Counsel adduced a copy of the introduction letter from the Area Local Council 1 as well as a copy of the applicant's National Identity card to support this fact.

Counsel submitted that the applicant has filed an appeal in this court 30 which is not frivolous and has a likelihood of success. He argued that looking at the judgment of the Court of Appeal in light of the Public Finance Accountability Act of 2003 as well as the Regulations

¹ SCCA No.1 of 2003.

² SCCA No.20 of 2011.

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thereunder, and the Public Procurement and Disposal of Public S Assets Act shows likelihood of success of the appeal because the mens rea and actus reus were not evaluated properly by the lower courts.

Counsel for the applicant also supported his submission that there was likelihood of success of the pending appeal with the fact that the 10 applicant's conviction was not unanimous, it was a decision of 2:1 which upheld the applicant's conviction. Counsel stated that the dissenting judgment which dismissed the conviction of the applicant captures the core of the appeal.

Counsel further submitted that there is a possibility of delay in the 15 determination of the appeal given the fact that the present application was filed on 12th December, 2019 but was heard on 14th February, 2020- two months after the filing. That premised on this fact there is no way the applicant's appeal can be heard expeditiously

given the busy schedule of the Court. That the only remedy would be to grant the applicant bail pending.

Three individuals were presented to court as persons willing to stand as sureties for the applicant if the Court were to grant the application. The same persons had stood surety for the applicant in both the High

- Court and the Court of Appeal. Counsel introduced the sureties to the Court as follows:
- 1. Hon. Ernest Kiiza- Member of Parliament and a Minister of State for Bunyoro Affairs residing at Mutundwe II LC 1 Zone. He is a friend of the applicant. National Identity Card No. CM6702510442GL.
- 2. Mr. Nsamba Bukenya Fred a Principal Internal Auditor at Ministry of Science, Technology and Innovation and a resident of Najjera Village L. C 1 Kira Town Council. National Identity Card No. CM70012100HLPD. Friend of the applicant.

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3. Dr. Patrick Musinguzi, a lecturer Makerere University Kampala in the Department of Agricultural Production and a resident of Nabweru, North Zone, Wakiso District. National Identity Card No. CM81016100ZWTJ. Brother to the applicant.

The original identification documents of the 1st two above named sureties were presented by counsel for the court's citation. The third 10 surety presented a photocopy of his National Identity Card and explained that he had lost the original document. Counsel submitted that along with the sureties, the applicant produced two properties of land comprised in Busiro Block 397 Plot 94 and 34 at Bweya LRV Vol.1721, Folio 18. The titles of the said properties were in custody 15 at the High Court where the applicant had previously applied for bail pending trial. Counsel sought the indulgence of this Court to have the said titles transferred from the High Court to this Court. Counsel also presented a copy of a cash bail receipt of Uganda Shillings eight million \$(8,000,000/\$ =) which was paid in the lower court. Counsel 20 informed Court that the applicant's passport had been deposited in the High Court and was still in its custody at the time of this application.

Counsel further submitted that the applicant suffers from high blood pressure which fact is supported by two medical reports; one from 25 the applicant's private doctor and the other from the Medical Superintendent Murchison Bay hospital. That the latter report indicated that the applicant's health condition was life threatening and can be fatal especially under prison conditions.

On the premise of the above, counsel submitted that the applicant 30 has fulfilled all the necessary conditions for grant of bail.

Respondent's reply

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On the other hand, the respondent's representative opposed the application. Counsel strongly argued that although the offence did not involve personal violence, it is still of a serious nature since 35

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colossal sums of money were lost and this makes him fall short of $\$S$ the conditions for grant of bail pending appeal. Counsel further argued that although the applicant had honoured the bail conditions in the previous courts, the circumstances had since changed with the conviction from two courts. That there was therefore a greater temptation for the applicant to abscond bail. 10

On the issue of delay in hearing the intended appeal, counsel submitted that the assertion is speculative. She argued that instead of granting him bail, the appeal should be expeditiously handled and disposed of.

- In regard to the applicant's ill health, the respondent counsel 15 contended that the medical report from Murchison Bay simply stated that the applicant's health condition was fatal in prison. That there was nothing on record to show that the prisons health facility had failed or could not handle the applicant's health condition. Counsel
- asserted that the medical condition can be ably handled from prison. 20

Concerning the sureties, counsel disputed the introduction letter presented by Hon. Ernest Kiiza. Counsel argued that whereas Hon. Kiiza was introduced to Court as a resident of Mutundwe, the introduction letter stated that he was a resident of Kakajjo zone,

Bukesa. Counsel prayed that the surety be found as unsubstantial. 25 Furthermore, counsel prayed that in the event bail is granted, the security of the properties which are in custody at the lower court be transferred to this Court.

In conclusion, counsel prayed that the Court declines to grant the application. 30

Rejoinder

In rejoinder, counsel for the applicant submitted that the discrepancy of Hon. Ernest Kiiza's residence arose from the fact that he has dual residence in the aforementioned areas. However, this did not make

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him an unsubstantial surety or hard to trace because he holds a S public office as a Member of Parliament.

Consideration of the application:

I have considered the pleadings and submissions by both counsel together with the relevant laws.

Rule 6(2) (a) of the Rules of this Court provides for the grant of bail pending appeal to an applicant as follows:

“(2) ... 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.....pending the determination of the appeal."

I note that the applicant has complied with the above rule and filed 20 a Notice of Appeal in this Court as seen from annexure "A" of his application.

Before I delve into the merits of this application, I must from the onset emphasize that bail whether pending trial or pending appeal is granted at the discretion of court which discretion must be exercised judiciously with each case being determined on its own merit.

I must also emphasize that after conviction, the legal status of an offender changes and the consideration for release has been held to hinge on whether there are exceptional and unusual circumstances warranting release pending appeal³. This is because the applicant is no longer wholly shielded by the presumption of innocence

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³ Trevelyan J in *Somo v Republic* [1972] E. A. 476 - 481.

- espoused in Article 28 (3) of the Constitution. This distinction is S in fact pointed out in the *David Chandi Jamwa vs. Uganda* authority cited by the applicant in support of his application. Similarly, in *Chimambhai vs. R* (No.2)⁴ Harris J held that it is manifest that the case of an appellant under sentence of

- imprisonment seeking bail lacks one of the strongest elements normally available to an accused person seeking bail before trial namely that of presumption of innocence.

A presumption is rebutted by factual evidence. In the instant case the presumption of innocence has already been rebutted by the fact

that two lower courts have convicted the appellant. Whereas Article 15 132 (2) of the Constitution provides for a right of appeal to the Supreme Court, from decisions of the Court of Appeal (albeit in accordance to prescribed law), this right cannot be said to re-clothe an already convicted person with the presumption of innocence

articulated under **Article 28 (3) (a)**. On conviction any allegations against a person graduate into factual findings by a court of law thus rendering him outside the ambit of persons envisaged in Article 28 (3) (a). It is for this reason that a person applying for bail pending appeal must be subjected to a more stringent test than one who is not yet convicted. 25

It must necessarily follow that the principles which apply to applications for bail pending appeal are different from and certainly more stringent than those applicable to applications for bail pending trial⁵

Bail pending appeal nevertheless recognises the possibility of the conviction being erroneous or the punishment being excessive.⁶ It is this recognition which is implicit in Article 132 (2) of the

⁴ [1971] 1 E. A 343.

⁶ Harris J [1971] 1 E. A. 343

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⁵Sheridan J in Girdhar Dhanji Masrani vs. R [1960] 1 E. A. 320

Constitution and Rule 6 (2) (supra) that creates the right of appeal \$5\$ in criminal cases even where two lower courts have already concluded that the applicant is guilty of crime.⁷

The question I must however ask is: has the applicant in the instant case proved exceptional and unusual circumstances warranting release?

According to Arvind Patel vs. Uganda (supra), relied upon by the applicant, the general guiding principles for release on bail pending appeal are:

- 1. The character of the applicant.
- *2. Whether the applicant is a first offender or not.*
- 3. Whether the offence with which the applicant was convicted involved personal violence.
- 4. The appeal is not frivolous and has a reasonable possibility of success.
- 5. The possibility of substantial delay in the determination of the appeal.

- 6. Whether the applicant has complied with bail conditions granted before the applicant's conviction and during the pendency of the appeal if any.
- I opine that although the applicant is a first time offender, of good 25 character, a sole breadwinner of his family, all such factors which go to the applicant's credit recede to the background when weighed with the seriousness of the offence and whether or not there is likelihood that the appeal would succeed. Indeed as stated by Trevelyan J (Supra), good character alone can never be enough because there is 30

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⁷ Rule 6 (2) (a) of the Rules of this Court.

- nothing exceptional or unusual in having good character.⁸ And in the \$ \mathsf{S}\$ persuasive authority of Dominia Karanja vs. Republic⁹ Kenya's Court of Appeal stated that previous good character of the applicant and the hardship if any facing his family are not exceptional and unusual factors.
- In my view, the factors that the court must above everything else -10 be guided by are: the gravity of the offence and the likelihood of success of the appeal.

Counsel for the appellant submitted that the fact that the offence did not involve personal violence should be considered as a factor favourable to the applicant in his prayer for release. In my considered 15 view, the gravity of the offence must not and cannot be exclusively defined in terms of whether it involved violence or not. And it is obvious that by its very nature, the offence of causing financial loss cannot by the stretch of any one's mind involve violence. I am

- persuaded by the opinion of Trevelyan J (Supra), that the distinction 20 sought to be drawn between violent and non-violent crimes is over emphasised. Indeed, I "do not agree that a man who has been convicted of committing a serious financial crime is deserving of more favoured treatment than an ordinarily inoffensive man, who has been
- convicted because, having had a mite too much drink, he knocked 25 someone's tooth out". Thus 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 etc. Consequently the authority of Patel (supra) does not offer the court a blue print for a decision on an application for bail pending appeal. 30

As already stated, the presumption of innocence has already been rebutted by the fact that two lower courts have convicted the appellant. Conviction is followed by punishment. Restricting the Jusalems.

⁸ Somo v Republic [1972] E. A. 476 -481. ⁹ (1986) KLR 612.

- applicant's freedom of movement is one of the terms of the \$5\$ punishment. Therefore, in order to grant freedom to such a person whose fundamental freedom has been lost by the conviction of two courts, there must exist some 'exceptional and unusual circumstances'. In other words, the case must be so exceptional
- and unusual that having regard to all the circumstances 10 surrounding it, the court will be justified in overlooking the order for his imprisonment and make a counter order that he be released, at least until his appeal has been determined.

If it is expected that the threshold for 'exceptional and unusual circumstances' is high in regard to an application for bail pending 15 appeal in a first appellate court, it must be that much higher on a second appeal. I opine that release pending a second appeal should be the exception rather than the norm.

I must also specifically point out that even before conviction -Uganda's law calls upon courts to exercise a high degree of caution 20 while considering grant of bail to a person awaiting trial on a charge of causing financial loss. Consequently, although Section 14 of the **Trial on Indictment Act** provides that the High Court may at any stage in its proceedings release an accused person on bail, under Section 15 of the Trial on Indictment Act, the law sets a higher 25 standard for bail pending trial on a charge of causing financial loss the applicant must prove to the satisfaction of the court that **exceptional circumstances** exist to justify their release on bail

Counsel for the applicant argued that there is a possibility of substantial delay in disposing of the appeal due to case backlog. The applicant did not support his assertion that the Supreme Court is back-logged with any cogent evidence. But even more important is that I am of the view that "delay" in disposing of the appeal should

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be assessed in light of whether there is a real risk that the sentence \$5\$ or a considerable portion of it will have been served before the appeal is heard. I note that in this present case, the applicant was sentenced to 10 years and 10 days in prison. It certainly will not have expired by the time the appeal is heard. Furthermore, as stated by Trevelyan J (Supra) delay can only alone be an unusual or exceptional 10 circumstance if it is unusual itself. In the present matter, there is no basis for speculating that the applicant's appeal will be subjected to an unusual delay.

Counsel for the applicant also argued that the appeal is not frivolous and has a reasonable possibility of success. I opine that whenever an 15 application for bail pending appeal is considered, it must never be forgotten that the presumption is that when the applicant was convicted, he was properly convicted. Nevertheless the likelihood of success of an appeal is perhaps the only ground which even when put forward singly can present as an exceptional circumstance. In 20 my view however, since court does not at this particular point in time delve deeply into the merits of the appeal, I would rather say that the question should be whether the

appeal is prima facie <u>arguable</u>.

It was held in **Patel (supra)** that "the only means by which court can assess the possibility of success of the appeal is by perusing the 25 relevant record of proceedings, the judgment of the court from which the appeal has emanated and the Memorandum of Appeal in question."

It is expected that I must ask myself the following question: having read the Memorandum of Appeal, the judgment of the Court of 30 Appeal and the **relevant court record**, do I hold the impression that the appellant's appeal has a fair chance of being successful?

The applicant in the present matter attached to his application both the Notice of Appeal and a Memorandum of Appeal. He also annexed the judgment in the Court of Appeal. However, the record of

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proceedings was not attached. A missing court record certainly \$5\$ disadvantages an applicant since the prospects of the appeal succeeding cannot exhaustively be evaluated. Nevertheless I proceeded to look at the grounds of appeal and the judgment of the lower court, while keenly aware that I am not sitting as an appellate court and cannot therefore delve into the merits of the appeal. 10

The pending appeal is governed by **Section 5 of the Judicature Act** which is to the effect that a second appeal lies to this Court on a matter of law or mixed law and fact. And case law is to the effect that "On second appeal, the Court ... is precluded from

questioning the findings of fact of the trial court, provided 15 that there was evidence to support those findings, though it may think it possible or even probable that it would not have itself come to the same conclusion."¹⁰

On a second appeal the court is by implication being asked by the appellant to interfere with the findings of the lower court on the 20 basis that the **evidence** adduced did not pass the requisite standard of proof in a criminal case.

I note that the essence of grounds (1-4) in the applicant's Memorandum of Appeal relate to matters of re-evaluation of evidence. The grounds necessitate an interrogation of the accused's conduct 25 (fact) in performance of his duty juxtaposed with mens rea. Even Counsel Ogalo's argument that a look at the judgment of the lower courts in light of the Public Finance Accountability Act of 2003 as well as the Regulations thereunder, and the Public Procurement and Disposal of Public Assets Act shows likelihood of success of the 30

appeal because the mens rea and actus reus were not evaluated

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¹⁰ E.g. Kifamunte Henry v Uganda Criminal Appeal No. 10 of 1997; Mulindwa James vs Uganda SCCA no. 23 of 2014.

properly, can only be properly assessed by perusal of the records of S the lower courts.

In light of the above mentioned role of a second appellate court, and a quick perusal of the grounds of appeal calling upon the Court to re-evaluate evidence, the need for the court proceedings becomes very clear. Without the record of proceedings I am unable to determine whether on the face of it the Court of Appeal failed in its duty of re-evaluation of evidence which is necessary for reaching their own decision.

However, in addressing the ground of the likelihood of success of the applicant's appeal, I take note of the fact that the applicant's 15 conviction was upheld by a 2:1 decision. The dissenting Justice held inter alia that the High Court erred in conferring upon the applicant - a Principal Accountant – responsibility identical to that of an Accounting Officer. Furthermore, I take note of Counsel

Ogalo's submission that Section 7 (2) of the Public Finance and 20 Accountability Act, Regulation 13 (1) of the Public Finance and Accountability Regulations as well as subsection 2 (v) of the same Regulation specifically vests the responsibility to safeguard public funds in Accounting Officers. The essence of counsel's argument is that proper interpretation of these provisions should lead to a 25 finding that the conviction of the applicant was based on the court ascribing to the applicant a duty he did not carry under law.

The argument of counsel is exclusively based on interpretation of the law(s). Arriving at a decision whether or not there is likelihood of success of the appeal based exclusively on interpretation of the said legal provision and not on application of the law to factual

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analysis does not require me to look at the record of the lower S court. And I am alive to the fact that a court sitting to hear an application for bail pending appeal is not expected to discuss the merits of the propositions to be delved into on appeal. It however must determine whether on the face of it, the point being argued/ presented is arguable. I find this point arguable on appeal. 10

Therefore, in light of the fact that the applicant's conviction was not based on a unanimous decision and my finding that a legal point made by his counsel is arguable, I am inclined to grant the application.

- Further still, another ground presented by the applicant for grant of 15 bail pending is that he suffers from ill health which cannot be handled in prison. On record is a letter presented from the applicant's private Doctor stationed at Kadiac dated 12th December 2019. The report indicates that the applicant suffers from Diabetes

- and blood pressure and that he will need close expert supervision 20 out of prison environment. There are two other medical reports from the Murchison Bay Hospital prison facility detailing the applicant's ill health. The latter letter is dated 16th December, 2016 in which the prison's Medical Superintendent noted that the health

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conditions suffered by the applicant are high life threatening and can be fatal under prison conditions. The other earlier letter dated 28th October 2014 indicates that the applicant suffers severe Hypertension, Diabetes and clinical Gastritis. It further states that

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\$\mathsf{S}\$ the applicant was progressively losing sight and the prison's medical facilities were unable to offer the needed treatment.

Bail pending appeal is granted at the discretion of court which discretion must be exercised judiciously with each case being determined on its own merit. I have already emphasized in this ruling

that after conviction, the legal status of an offender changes and the 10 consideration for release has been held to hinge on whether there are exceptional and unusual circumstances warranting release pending \$appeal¹¹\$.

Considering the applicant's health status detailed above which the

- Prison's Medical Superintendent stated could not be handled by the 15 prison's medical facilities and my finding that the appeal is arguable, I am persuaded that the applicant has proved exceptional circumstances warranting grant of bail pending the hearing of his appeal.
- In reaching my decision, I have been guided by a fundamental test 20 for release: the interest of justice.

The applicant presented three individuals who would guarantee that he will avail himself whenever required to attend Court and would abide by all the conditions set by court. I have perused the

particulars of the said individuals and I find each of these persons a substantial surety. They were all present in Court during the

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^{&/sup>lt;sup>11} Trevelyan J in Somo v Republic [1972] E. A. 476 - 481.

- hearing of the application and are present during the delivery of $\$S$ this ruling. The same persons stood surety for the applicant in both the High Court and the Court of Appeal. The applicant complied with the terms of bail set by the High Court pending trial and by the Court of Appeal pending the appeal. I take it that the three
- individuals appreciate their legal duties as sureties in an application for bail. The relationship which they said they have with the applicant also indicate that they have influence over him and are capable of ensuring that he abides with the bail conditions. The sureties are:
 - 1. Hon. Ernest Kiiza- Member of Parliament and a Minister of State 15 for Bunyoro Affairs residing at Mutundwe II LC 1 Zone. He is a friend of the applicant. National Identity Card No. CM6702510442GL
 - 2. Mr. Nsamba Bukenya Fred a Principal Internal Auditor at Ministry of Science, Technology and Innovation and a resident of Najjera Village L. C 1 Kira Town Council. National Identity Card No. CM70012100HLPD. Friend of the applicant.
 - 3. Dr. Patrick Musinguzi, a lecturer Makerere University Kampala 25 in the Department of Agricultural Production and a resident of Nabweru, North Zone, Wakiso District. National Identity Card No. CM81016100WTJ. Brother to the applicant.

Consequently, I release the applicant on bail pending appeal on the following terms: 30

1. Before release, the applicant shall deposit in this Court as cash bail Ushs. \$10,000,000/\$ = less the 8,000,000/ = deposited in the Court of Appeal.

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- 2. The applicant must before release deposit the Certificates of Title to properties comprised in Busiro Block 397 Plot 94 & 34 land at Bweya and LRV 1721 Folio 18 Plot 27 Namiiro Swamp Access Road Entebbe Wakiso which had been valued at over Ushs. 1,350,000,000/= (One Billion Three Hundred Fifty Thousand million shillings) and Ushs. \$250,000,000=\$ respectively in August 2014.
- 3. The three sureties presented to Court are obliged to ensure that he attends Court whenever he is required to do so.
- 4. Each surety shall bind himself by signing a bond in the sum of Ushs. \$100,000,000/\$ = each non-cash.
- 5. The applicant shall report to the Registrar of this Court on the last working day of each month at 10 a.m. beginning from the 31st day of March 2020 until the disposal of his appeal.

- 6. A breach of any of these conditions by the applicant shall render the bail pending appeal herein granted to automatic cancellation.
- 7. The Registrar of this Court shall be availed a copy of this Ruling to cause the transfer of the applicant's security of properties as well as his passport from the lower court to this Court and effect the rest of the orders given herein.

I so order.

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Dated at Kampala this..... \$\mathsf{S}\$

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PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA JUSTICE OF THE SUPREME COURT.

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