

**IN THE HIGH COURT OF ZAMBIA
AT THE ECONOMIC AND FINANCIAL
DIVISION HOLDEN AT LUSAKA**
(Criminal Jurisdiction)

HPEF/BO5/2024

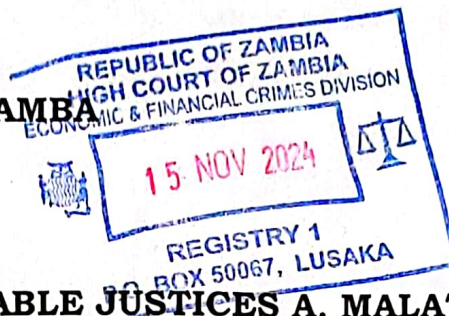
BETWEEN

GEOFREY BWALYA MWAMBA

AND

THE PEOPLE

**BEFORE THE HONOURABLE JUSTICES A. MALATA-ONONUJU, I.
M. MABBOLOBOLO AND S. V. SILOKA ON THIS 15TH DAY OF
NOVEMBER, 2024.**



APPLICANT

RESPONDENT

FOR THE APPLICANT: *Mr. Bonaventure Mutale SC - Messrs. Ellis & Co. Mr. Bwalya - Messrs. KBF and Partners. Mr. Changano - Messrs. D. Findlay & Associates. Mr. L. Lemba - Messrs. Mulungushi Chambers.*

FOR THE RESPONDENT: *Mrs. A. Kennedy Mwanza – Principal State Advocate – National Prosecution Authority & Mrs. N. K. Chizyuka – State Advocate – Anti-Corruption Commission*

RULING ON BAIL PENDING APPEAL

Justice S. V. Siloka delivered the Ruling of the Court.

CASES REFERRED TO:

1. *Stoddard Vs the Queen (No.1) 5 N.R.L.R 288;*

2. *Faustin Kabwe and Aaron Chungu Vs The People* (2011) ZR 186 Vol. 2;
3. *Joseph Watton* (1979) cr. App. 293;
4. *Titus Zulu and Another Vs The People* (2010) ZR 450;
5. *The People Vs Yousouf Pandor and Bengula Beyani* (2010) ZR 206;
6. *Zulu Vs The People* (1974) ZR 58;
7. *Golden Daka Vs The People* (HJA/03/2021);
8. *Paul Zulu Vs The People* (HPA/51/2021);
9. *Kashiwa Bulaya Vs The people* (SCZ 9/01/2009);
10. *Clement Chansa Vs The People* (HPEF/303/2024);
11. *Anul Kumar Rathi Krishna Vs The People* (2011) ZR;
12. *S Vs Mazibuko and Another* (2010) SACR;
13. *Sydney Kasunga Mumba Vs The People* (HPB 17 of 2017);
14. *Lewis Mulenga Vs The People* (HPBA/17/2017);
15. *Collin Roberts Vs The People* (CAZ/09/2024);
16. *Ademba Vs The Republic* (1983) KLR 442; and
17. *Dominic Karanje Vs The Republic* (1986) KLR 612.

LEGISLATION REFERRED TO:

1. Section 332 (1) of the Criminal Procedure Code, Chapter 88 of the Laws of Zambia.

1.0 INTRODUCTION

- 1.1 The Applicant herein was convicted by the Magistrate Court on the 9th October, 2024, to five years imprisonment with hard

labour on the first eight (8) Counts and three (3) years on Counts 9 to 13.

- 1.2 Following that conviction, the Convict applied for Bail pending Appeal before the Subordinate Court but the Application was denied.
- 1.3 As a result of that refusal, the Applicant has renewed his Application for Bail pending Appeal before the High Court.

2.0 THE APPLICANT'S AFFIDAVIT IN SUPPORT

- 2.1 The Affidavit in Support was sworn by Geoffrey Bwalya Mwamba, of Plot No. 2623/M New Kasama, in the Lusaka Province of the Republic of Zambia.
- 2.2 He deposed that he is the Applicant and competent to swear this Affidavit from the facts personally known to him and available on Record.
- 2.3 That he was currently remanded at Mwembeshi Correctional Facility.
- 2.4 The Deponent further deposed that on 9th October 2024, he was convicted by the Subordinate Court in Counts 1 to 13 for Conflict of Interest, Money Laundering and being in possession of property suspected of being proceeds of crime.
- 2.5 It was further averred by the Deponent that he was sentenced to 5 years imprisonment for the first 8 Counts and 3 years imprisonment with hard labour for Counts 9 to 13 as per exhibit "GBM1", which is a copy of the Judgment of the Court below.

- 2.6 It was further deposed that on 10th October, 2024, he filed his Notice of Appeal and Grounds of Appeal against the said conviction and sentence as per exhibit marked **"GBM2"**.
- 2.7 It was further deposed by the Deponent that following the filing of his Notice of Appeal, he filed for Bail pending Appeal before the trial Magistrate but that the Application was denied by the Court.
- 2.8 It was further deposed by the Deponent that he is of fixed abode and not a flight risk and that he religiously attended trial and never at any point dishonored the conditions of Bail during the entire trial which lasted 27 months from 29th July, 2022, when Plea was taken to 9th October, 2024, when Judgment was delivered.
- 2.9 That he was able to provide credible sureties and will abide by any conditions that this Honorable Court may impose as part of the bail conditions.
- 2.10 That he has a chronic heart condition which has made him receive medical attention from Cardiac Specialist in South Africa.
- 2.11 That during trial he occasioned several adjournments because he was unable to attend trial due to the chronic heart disease.
- 2.12 The Deponent further deposed that he was initially attended to by his Doctors at Medlands Hospital who conducted several medical tests on him and advised that he needed medical attention as per exhibit **"GBM4"**.
- 2.13 It was further deposed that on 26th February, 2024, he went to Medlands Hospital after trial and the Doctors conducted several

tests on him and discovered that his condition had become severe and recommended immediate evacuation as per exhibit **"GBM5"**.

2.14 That following his non-attendance of trial due to his sickness, the Trial Court ordered that he undergoes medicals from a Government Hospital and be examined by a Government Doctor to prove that indeed he was suffering from a cardiac disease.

2.15 That further, on 26th March, 2024, two Cardiologists from the National Heart Hospital attended before the Trial Court and confirmed that his condition was critical and needed immediate evacuation for specialized treatment as per exhibit **"GBM6"**.

2.16 That on 13th May, 2024, he instructed his Advocates to make a formal application for him to travel out of jurisdiction for specialized medical treatment as per **"GBM7"**.

2.17 That on 24th May, 2024, the Trial Court granted him permission to travel to South Africa to undergo specialized medical attention and that he was attended to by a Specialist as per exhibit **"GBM8"**.

2.18 That during trial, he experienced body weakness and leg swelling when he sat in one position for more than two hours. This state of affairs was brought to the attention of the Trial Court, which allowed the duration of the sessions to be reduced to two or three hours.

2.19 That as advised by Dr. Phillip Pincus, a Specialized Physician at Milpak Hospital in Johannesburg, South Africa he needs to rest as much as possible and that he requires monthly checkups for the next four months as per exhibit **"GBM9"**.

- 2.20 That further as stated in the report of Dr. Kelvin S. Fisher, a Urologist, he is still undergoing various tests and scans for prostate cancer as per exhibit marked **"GBM 10"**.
- 2.21 That further there is no medical facility available at the Mwembeshi Facility or anywhere nearby. The nearest facility is the University Teaching Hospital (UTH) which is 60 km away.
- 2.22 That in the light of the above Reports, it is conceivable that if his Bail Application is not renewed, his health status is likely to considerably deteriorate, thereby endangering his life.
- 2.23 That it is common knowledge that the Economic and Financial Crimes Court is overwhelmed with pending criminal matters and that there is likelihood of delay in the preparation of the Record of Appeal.
- 2.24 That if he is not released on Bail, there is a likelihood that he would have served a substantial part of his sentence.
- 2.25 That he is advised by his Advocates and verily believe the same to be true that the Appeal has high prospects of success as outlined in the Grounds of Appeal and Additional Grounds of Appeal exhibited as **"GBM11"**.
- 2.26 That the State will not in any way be prejudiced if he is granted Bail.

3.0 SKELETON ARGUMENTS IN SUPPORT

- 3.1 Mr. Bonaventure Mutale, SC on behalf of the Applicant submitted that the Application was made pursuant to **Section 332 (1)** of the **Criminal Procedure Code** which provides:

“After the entering of an Appeal by a person entitled to Appeal, the Appellate Court, or the Subordinate Court which convicted or sentenced such person, may, for reasons to be recorded by it in writing, order that he be released on bail with or without sureties, or if such person is not released on Bail shall, at the request of such person, order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his Appeal.”

3.2 Counsel further submitted that the case of **Stoddard Vs The Queen**⁽¹⁾ laid down the principle that a convicted person should not be released on bail pending appeal unless exceptional circumstances are disclosed.

3.3 The Court was further referred to the case of **Faustin Kabwe and Aaron Chungu Vs The People**⁽²⁾ where the High Court held that:

“Where an applicant applying for bail raises health related issues, there exists the obvious tension between the health concern of the applicant and the potential risk of flight and therefore a reasonable balance needs to be struck between the two factors”.

3.4 Further the Court was referred to the case of **Joseph Watton**⁽³⁾, where it was held that:

“Bail could be granted in special circumstances: where it appears that prima facie the appeal is likely to succeed; where there is a risk that the sentence will be

served by the time the appeal is heard and where the grounds of appeal are arguable.”

3.5 Counsel further submitted that the Applicant should be admitted to Bail pending Appeal because the Appeal has high prospects of success and that the Appeal raises important questions of law. Counsel relied on the case of **Titus Zulu and Another Vs The People**⁽⁴⁾ where it was held that:

“Likelihood of success can be demonstrated by doubt in the correctness of a conviction or showing that the sentence is manifestly contestable”

3.6 In the Supplementary Grounds of Appeal filed on 31st October, 2024, Mr. Bonaventure Mutale, SC submitted that the Applicant should be admitted to Bail pending Appeal because of exceptional circumstances.

3.7 It was submitted that the medical history of the Applicant as outlined in Paragraphs 1 to 25 of the Applicant’s Affidavit and also in the Affidavit of Mr. Bonaventure Chibamba Mutale, SC confirms that the Applicant has serious health issues which this Court ought to take into consideration as exceptional circumstances.

3.8 Further, Counsel urged us to seriously consider the medical reports from the Zambian Doctors at Medland Hospital, the Cardiologists at the National Heart Hospital and South African Specialists as per exhibits “GBM1” to “GBM6” and “GBM9” to “GBM10”.

- 3.9 In conclusion, relying on the case of **Faustin Kabwe And Aaron Chungu Vs The People**⁽¹⁾ State Counsel urged the Court to strike a proper balance between the health concern of the Applicant and the potential risk of flight and that the balance should be in favour of the Applicant since he did not violate Bail conditions during trial.

4.0 AFFIDAVIT IN OPPOSITION

- 4.1 The Affidavit in Opposition was deposed to by Angelica Kennedy Mwanza, a Zambian National of the City and Province of Lusaka.
- 4.2 The Deponent deposed that she was a Principal State Advocate in the Appeals Department in the employ of the National Prosecution Authority and therefore competent to swear this Affidavit from facts within her personal knowledge and belief.
- 4.3 That she has read the contents of the Affidavit in support of the Renewed Summons for Admission to Bail pending Appeal filed into Court on 25th October, 2024, and sworn by the Applicant.
- 4.4 That the contents of Paragraphs 1 to 7 of the Applicant's Affidavit in Support of Renewed Summons for Admission to Bail pending Appeal are not in dispute.
- 4.5 That she makes no averment to the contents of Paragraphs 8 to 23 of the Applicant's Affidavit as the same are within the Deponent's peculiar knowledge.
- 4.6 That the contents of Paragraph 24 of the Applicant's Affidavit are denied because there is no credible admissible evidence that the University Teaching Hospital or any private hospital where

Inmates are referred to will be unable to deal with the Applicant's condition.

- 4.7 It was further deposed by the Deponent that, the Applicant has not demonstrated that his ill-health is an exceptional circumstance warranting this Courts' discretion to admit him to Bail pending the hearing of his Appeal.
- 4.8 That the contents of Paragraphs 26 to 28 of the Affidavit are denied as the same are mere speculations save to add, the mere fact that the Record has four (4) bulky volumes does not in itself determine the duration within which an Appeal can be determined.
- 4.9 That Paragraph 28 of the Affidavit is denied as the Applicant will not have served a substantial part of his Sentence since the Economic and Financial Crimes Court is a Fast Truck Court which disposes off matters quickly.
- 4.10 That further to Paragraph 11 above, the Economic and Financial Crimes Court Rules has a time frame of 5 months within which a case on Appeal has to be determined, that the Notice of Appeal having been filed on 10th October, 2024, the period of 5 months has already started running.
- 4.11 That Paragraph 29 is denied as a quick perusal of the Judgment and the grounds advanced for the intended Appeal show that there is no likelihood of success of this Appeal.
- 4.12 That Paragraph 30 is denied as she verily believes that if the Application sought is granted, the likelihood of the State being prejudiced in the effective prosecution of this matter is greater than that of the Convict.

4.13 That the Applicant has not demonstrated any exceptional circumstances whatsoever, as such this Court should not grant Bail pending Appeal.

5.0 SKELETON ARGUMENTS IN OPPOSITION

5.1 Counsel for the Respondent submitted that this Court pursuant to **Section 332 (1)** of the **Criminal Procedure Code, Chapter 88** of the **Laws of Zambia** has discretion to grant Bail pending Appeal but that the granting of Bail pending Appeal rests within the discretion of the Court. This discretion should be exercised judiciously.

5.2 It was Counsel submission that the criteria of granting Bail pending Appeal was clearly articulated in the case of **Stoddard Vs The Queen** where it was held that a convicted individual should not be released on Bail pending Appeal unless exceptional circumstances are demonstrated.

5.3 Counsel further referred the Court to the case of **The People Vs Yousouf Pandor and Bengula Beyani**⁽⁵⁾, where Matibini J. held, among other things, that:

“The exceptional or unusual circumstances include; where an Appeal has raised an important or difficult point of law; where there is real doubt about the correctness of a conviction on a point of law; where a sentence is manifestly contestable as to whether or not it is a sentence known to the law; where the Applicant is likely to serve the entire or substantial part of the

sentence before the appeal is heard and where generally there is a likelihood of success on Appeal”.

5.4 It was Counsel’s further submission that as articulated in ***Stoddard Vs The Queen*** and ***Yousouf Pandor*** supra, exceptional circumstances must be proved for Bail pending Appeal to be granted. This is particularly important as the Applicant is regarded as a Convict rather than an accused person. Consequently, the conviction and sentence of the individual are deemed definitive at this stage, Courts are thus required to exercise caution when granting Bail to convicted individuals, and application for Bail by such persons should be assessed against a more stringent standard than those made by individuals facing trial.

5.6 Counsel further contended that the Applicant being a Convict, does not enjoy the same status a free, or innocent person enjoys. In support of this proposition, Counsel referred the Court to the case of ***Titus Zulu, Mike Musaka Sambongu Vs The People***⁽⁴⁾ where it was held that:

“Unlike bail pending trial, Bail pending Appeal is granted with reserve because the APPLICANT is a convicted person and the conviction is good unless and until the Appellate Court quashes the conviction”.

5.7 It was Counsel’s submission that the contention by the Applicant to be allowed to prosecute his Appeal while on Bail due to ill health is under these circumstances not an exceptional circumstance warranting this Court to exercise its discretion. Counsel referred

the Court to the case of **Zulu Vs The People**⁽⁶⁾ where the Supreme Court stated as follows:

“It may be that there are rare cases where the particular circumstances relating to an illness would justify a Court in suspending a custodial sentence. It would, however, be impossible for this Court to lay down a rule that all persons suffering from diabetic, and indeed persons suffering from other diseases which require special treatment, should by reason of that fact alone be immune from serving a custodial sentence. The circumstances of this case are clearly not exceptional.”

- 5.8 Further Counsel submitted that in the cases of **Golden Daka Vs The People**⁽⁷⁾, **Paul Zulu Vs The People**⁽⁸⁾ and the case of **Kashiwa Bulaya Vs The People**⁽⁹⁾ guided that ill health of a Convict is not an exceptional circumstance.
- 5.9 It was Counsel’s submission that from the Record, it is clear that there are medical facilities that have and can ably deal with illness in Zambia as indicated in the Applicant’s Affidavit. Mwembeshi Correctional facility is able to refer any advanced medical condition to the University Teaching Hospital. The University Teaching Hospital and other private hospitals such as Medland Hospital and National Heart Hospital where the Applicant has been attended to previously are available for advanced medical treatment in Zambia.
- 5.10 It was also submitted that the several adjournments that were occasioned by the Applicant on account of his ill-health are not an

important consideration. This is because during trial the Applicant was an innocent person. The Applicant is now a convicted person.

5.11 As regards delays and the likelihood of the Applicant serving a substantial portion of the Sentence by the time the Appeal is heard, Counsel submitted that the argument lacks merit because the Economic and Financial Crimes Court is a Fast Track Court which disposes off matters quickly as guided in the case of **Chansa Vs The People**⁽¹⁰⁾.

5.12 Further, Counsel submitted that as regards the likelihood of success, this Appeal has no prospects of success. According to Counsel, even though the Applicant has indicated in his Affidavit in Support of Bail pending Appeal, that he verily believes his Appeal will succeed, it is not for a Judge to delve into the merits of each ground, but suffice that all the grounds are examined and *prima facie* conclusion is made as to the prospects of success (see **Anul Kumar Rathi Krishna Vs The People**⁽¹¹⁾).

5.13 According to Counsel, the general analysis upon perusal of the Judgment and the Grounds of Appeal advanced by the Applicant, the prospects of the Appeal are dim.

6.0 THE HEARING

6.1 The Hearing of the renewed Bail Application was held on the 5th November, 2024. In support of the Application, Mr. Bonaventure Mutale, SC submitted briefly that the Applicant should be admitted to Bail pending Appeal because exceptional circumstances have been disclosed, that there is a likelihood of

delay in the preparation of the Record and that the Appeal has high prospects of success.

6.2 In buttressing ill health as an exceptional circumstance, State Counsel submitted that the Applicant herein adduced credible medical evidence which must weigh in favour of the Accused (see the South African case of ***S Vs Mazibuko and Another***⁽¹²⁾) where it was held *inter alia* ***“that for circumstances to qualify as sufficiently exceptional to justify the Accused’s admission on Bail, it must be one that weighs exceptionally in favour of the Accused thereby rendering the case exceptionally strong and compelling”***.

6.3 Mr. Bwalya Fube in augmenting, urged the Court to balance the authority of the all powerful State and the rights of the Accused and prayed that the Court uses its discretion judiciously to grant Bail pending Appeal to the Applicant.

6.4 Finally Mr. Changano is augmenting, prayed that the Applicant be admitted to Bail pending Appeal because the Applicant has demonstrated exceptional circumstances.

6.5 In response, Mrs. Kennedy on behalf of the State indicated to the Court that she would rely on the documents filed in opposition as the same extensively dealt with the Application.

6.6 In reply Mr. Mutale, SC reiterated his earlier submissions and urged the Court to admit the Accused to Bail pending Appeal.

7.0 ISSUES FOR DETERMINATION

7.1 The only issue for determination is whether the Applicant can be admitted to Bail pending Appeal.

8.0 ANALYSIS AND DECISION OF THE COURT

- 8.1 The law regarding Bail pending Appeal is provided for in **Section 332 (1) of the Criminal Procedure Code** which provides:

“After the entering of an Appeal by a person entitled to Appeal, the Appellate Court, or Subordinate Court which convicted or sentenced such a person, may, for reasons to be recorded by it in writing, order that he be released with or without sureties, or if such person is not released on bail, at the request of such person, order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his Appeal.”

- 8.2 In laying down guidelines as regards Bail pending Appeal, the Supreme Court in the case of **Stoddard Vs The Queen** and the case of **Sydney Kasunga Mumba**⁽¹³⁾ and **Lewis Mulenga Vs The People**⁽¹⁴⁾ guided that exceptional circumstances must exist for one to be admitted to Bail pending Appeal.
- 8.3 From the guidance of the above cited authorities, it is settled law that the Court has discretion to admit an applicant to bail pending Appeal where exceptional circumstances are disclosed.
- 8.4 Exceptional circumstances as explained in the case of **The People Vs Yousouf Pandor and Bengula Beyani** and the case of **Kurma Krishina**⁽¹¹⁾ cited above, refer to circumstances that exist, which include that the Appeal has a likelihood of success and that the Applicant would have served a substantial portion of the sentence by the time the Appeal is heard.

8.5 Therefore in *casu*, to resolve the question we posed to ourselves in 7.0, we have to determine the following.

- (i) *Whether the medical condition raised by the Applicant is an exceptional circumstance;*
- (ii) *Whether the Appeal has high prospects of success; and*
- (iii) *Whether the Applicant would have served a substantial portion of the sentence by the time the Appeal is heard and determined.*
- (i) *Whether the medical condition raised by the Applicant is an exceptional circumstance.*

8.6 In his attempt to persuade the Court that the medical condition of the Applicant is an exceptional circumstance, Mr. Bonaventure Mutale, SC has chronicled the medical history of the Applicant through exhibits “**GBM1**” to “**GBM9**” which according to him confirms that the Applicant herein has a serious medical condition.

8.7 Exhibit “**GBM6**” in particular reveals that the Applicant has a serious heart condition and needed immediate evacuation for specialized treatment outside the Country.

8.8 In opposing the Application, the State argued that the Applicant should not be admitted to Bail pending Appeal because he has not demonstrated that his ill health is an exceptional circumstance warranting this Court’s discretion to admit him to Bail pending Appeal.

9 In resolving this question, resort will be had to the guidance of the Supreme Court in the case of **Zulu Vs The People**. The Supreme Court stated as follows:

“It may be that there are rare cases where the particular circumstance relating to an illness would justify a Court suspending a custodial sentence, it would be impossible for this Court to lay down a rule that all persons suffering from diabetic, and indeed persons suffering from other disease which require special treatment should by reason of that fact alone be immune from serving a custodial sentence. The circumstance of this case is clearly exceptional.” (Emphasis ours)

8.10 It was further guided in the case of **Titus Zulu Mike Musaka Sambongu Vs The People**⁽⁴⁾ that:

“Unlike bail pending trial, Bail pending Appeal is granted with reserve because the Applicant is a convicted person and the conviction is good unless and until the Applicant Court Quashes the conviction. It is for this reason that different considerations apply in Application for bail pending Appeal.”

8.11 As guided by the above authorities, it is instructive to note that ill health is not a factor that has to be considered by the Court when it comes to Bail pending Appeal. This is so because the Applicant is a convict.

8.12 Even as we say so, we are alive to the guidance laid down in the case of **Zulu Vs The People** that ill health is to be taken into

account where there is evidence, either *viva voce* or by a written certificate.

8.13 In *casu*, having looked at exhibit “**GBM1**” to “**GBM9**”, we note that distinguished Medical Practitioners both in Zambia and South Africa, have indicated that the Applicant herein has a serious heart condition. This evidence is on Record and has not been disputed by the Respondents.

8.14 In light of the medical evidence before us, we have no doubt in our mind that the Applicant herein has a serious medical condition which is worthy taking note off. Even as we take note of the Medical Evidence before us, we note that the said Medical Evidence was issued under the hand of the Medical Doctors in March, 2024 and does not state whether the Applicant is still suffering from the same medical condition.

(ii) Whether the Appeal has prospects of success.

8.15 It was submitted by Counsel for the Applicant that the Applicant should be admitted to Bail pending Appeal because the appeal has a high prospect of success.

8.16 On the other hand, Counsel for the Respondent argued that the Appeal has no prospects of success.

8.17 We have considered the arguments of both Parties. In our considered view the Court in determining this principle has merely to determine *prima facie* if the appeal has prospects of success as guided in the case of **Anul Kumar Rathi Krisha Vs The People** where it was stated:

“Regarding the prospects of success, the learned single Judge of the Supreme Court declined to consider each Ground of Appeal separately and instead considered them in general. We agree with Mrs. Khuzwayo that it was not for the single Judge to delve into the merits of each ground, but sufficed that she examined all the Grounds and made her conclusion prima facie that the prospects of success of the Appeal were dim”.

8.18 Having looked at the Grounds of the Appeal and the impugned Judgment from the Court below, we find that the prospects of success are dim.

8.19 Closely related to this argument was that there are high prospects of success because the sentence is contestable. Counsel relied on the case of **The People Vs Yousouf Pandor and Bengula Beyani** cited above.

8.20 In our considered view the sentence is not contestable and will not come to this Court with a sense of shock.

iii. *Whether the Applicant would have served a substantial portion of the sentence by the time the Appeal is heard and determined.*

8.21 Counsel for the Applicant submitted that the Applicant should be admitted to Bail pending Appeal because the Economic and Financial Crimes Court is clogged with cases which will result in the Applicant serving a substantial portion by the time the Appeal is heard.

8.22 On the other hand, the State argued that this is a fast track Court and that matters do not take long to conclude.

8.23 We have considered the arguments of both Parties.

8.24 In our considered view, this argument lacks merit because this Court is a Fast Track Court and Matters are heard and disposed of quickly. This is what we said in the case of **Clement Chansa Vs The People**⁽¹⁰⁾.

8.25 Further, **Rule 3 of the Economic and Financial Crimes Court rules SI No.10 of 2024** gives a time frame of five months within which a case on Appeal has to be determined. The Rule states:

“The Court shall subject to this rule hear and determine a matter within 5 months from the date on which plea is taken or an Appeal is filed”.

8.26 Having found that the Applicant herein has adduced sufficient evidence to persuade us that he is unwell on one hand and failed to prove that his Appeal has high prospect of success and that he would have served a substantial portion of his sentence by the time the Appeal on the other hand, can the Applicant be said to have met the threshold for him to be admitted to Bail pending Appeal?

8.27 To answer that question, we sought guidance from the case of **Collin Roberts V The People**⁽¹⁴⁾ where it held that:

“When considering whether there are exceptional circumstance warranting the granting of bail pending Appeal, the most important factor is the likelihood of the Appeal succeeding, even where there is a likelihood

of the whole or substantial portion of the sentence being served by the time the appeal is heard, bail will not be granted, if there is no likelihood of the Appeal succeeding”.

8.28 Further, we are persuaded by two cases from Kenya. The first case was that of **Ademba Vs The Republic**⁽¹⁵⁾ where the Court of Appeal held that:

“Bail pending Appeal may only be granted if there are exceptional or unusual circumstances ... The likelihood of success in the appeal is a factor to be taken into consideration in granting Bail pending Appeal”.

8.29 The second case is that of **Dominic Karanje Vs The Republic**⁽¹⁶⁾ where the Court of Appeal held that:

“The most important issue was that if the Appeal had such overwhelming chances of success, there is no justification for depriving the applicant of his liberty and the minor relevant consideration would be whether there were exceptional circumstances, ill health per say would also not constitute exceptional circumstances”.

8.30 The guidance that we draw from the case of **Collin Roberts** and the above two persuasive authorities from Kenya is that for an Applicant to be admitted to Bail pending Appeal, the most important factor that has to be established is that the Appeal has high prospects of success. If this is proved *prima facie*, then it will be unjust to deny Bail pending Appeal. However, where *prima*

facie, it is established that the Appeal has no prospects of success, the Applicant will not be granted Bail even where other exceptional circumstances such as ill health have been established.

8.31 Therefore, in *casu*, having established that the Appeal *prima facie* has no prospects of success, the Application for Bail pending Appeal will not be granted even though the Applicant has produced evidence to show that he has a heart condition. As we arrive at this decision, it must be stated that we have looked at the medical evidence tendered before us as guided in **Zulu Vs The People**. However, since *prima facie*, there are no prospects of success, the Applicant who is a convict as guided in **Stoddard Vs The People and Kashiwa Bulaya Vs The People** cannot be granted Bail pending Appeal because he is rightfully and properly in the Correctional Facility, serving a sentence until the said sentence is set aside.

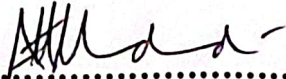
8.32 In our view, allowing the Application for Bail pending Appeal purely on medical ground/ill-health, which is a 'minor exceptional' exception would amount to stating that any one with ill health would be immune from serving a custodial sentence. This we do not intend to do.

9.0 CONCLUSION

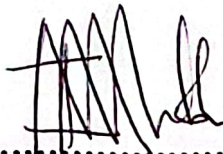
9.1 Although the Applicant has adduced "sufficient medical proof" to prove his illness, his Application for Bail pending Appeal is declined because the Appeal has no prospect of success and the Application for Bail pending Appeal cannot solely be granted on ill-health.

The upshot is that the Application is bereft of merit and is declined.

**DELIVERED IN CHAMBERS ON THE 15TH DAY OF NOVEMBER,
2024**


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**A. MALATA-ONONUJU
HIGH COURT JUDGE**


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**I. M. MABBOLOBOLO
HIGH COURT JUDGE**


.....

**S. V. SILOKA
HIGH COURT JUDGE**