

Cr App 4/13

IN THE COURT OF APPEAL OF SIERRA LEONE

IN THE MATTER OF AN APPLICATION FOR BAIL PENDING APPEAL TO THE
COURT OF APPEAL ON BEHALF OF MUSTAPHA AMARA PURSUANT TO
SECTION 67(2) OF THE COURTS' ACT, 1965

BETWEEN:

MUSTAPHA AMARA

- APPLICANT

AND

THE STATE

- RESPONDENT

COUNSEL:

S K KOROMA ESQ for the Applicant

A R MANSARAY ESQ and ADY MACAULEY ESQ for the Respondent

CORAM:

THE HONOURABLE MR JUSTICE P O HAMILTON, JUSTICE OF THE
SUPREME COURT

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE, JUSTICE OF APPEAL

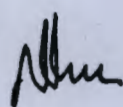

THE HONOURABLE MR JUSTICE E E ROBERTS, JUSTICE OF APPEAL

JUDGMENT DELIVERED THE 19TH DAY OF JULY, 2013

THE APPLICATION

1. The Applicant, Mustapha Amara, has in this Application dated 11 July, 2013, applied to this Court for Bail pending the hearing and determination of his appeals to this Court, against his conviction and sentence in the High Court. On 7 June, 2013 the Applicant was convicted by the High Court, KATUTSI, J Presiding, of the offence of Dishonest Appropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, 2008, and was sentenced to a term of imprisonment of 5 years and to a fine of Le60million. In addition, KATUTSI, J Ordered that he serve a term of 3 years imprisonment in default of payment of the fine imposed on him. The Applicant is also asking for any further Order this Court may deem fit and just, and for the Costs of the Application. As this is an Application in a criminal matter, no Costs are usually ordered.

MR KOROMA'S AFFIDAVIT

2. The Application is supported by the affidavit of Mr Koroma, deposed and sworn to on 11 July, 2013. Eight sets of documents are exhibited to this affidavit. "SKK1" is a copy of the Indictment on which the Applicant was convicted. "SKK2" is a copy of a drawn-up Order of Court dated 7 June, 2013. "SKK3" is a copy of the Judgment of KATUTSI, J also dated 7 June, 2013. "SKK4" is a copy of Notice of Appeal on a question of Law filed on 12 June, 2013; "SKK5" is a copy of Notice of Application for Leave to Appeal on mixed questions of Law and fact filed on 12 June, 2013; "SKK6" is a copy of Notice of Application for Leave to Appeal against Sentence also filed on 12 June, 2013.
3. "SKK7" is a copy of a receipt issued on 12 June, 2013 by the National Revenue Authority, evidencing the payment of the fine of Le60million by the Applicant. "SKK8" is a copy of an Affiliate Certificate awarded to the Applicant by the ACCA in August, 2002. "SKK9" is a copy of the certificate dated 22 December, 2011 of the marriage between the Applicant and his wife, then, Elizabeth Boima George. "SKK10" is a copy of the certificate dated 3 October, 2011 of the birth of the Applicant's daughter, Gertrude Amara.
4. In his affidavit, Mr Koroma deposes that the Applicant was acquitted by the Learned Trial Judge of the offence of Conspiracy ~~of Conspiracy~~ to commit a Corruption offence, but convicted of the offence charged in Count 2 of the Indictment. In accordance with the provisions of Sub-Section 57(1) of the Courts' Act, 1965 as amended, the Applicant has filed a Notice of Appeal against conviction on a question of Law, and respective Notices of Application for Leave to appeal against conviction on questions of mixed fact and Law, and Leave to appeal against Sentence. According to Mr Koroma and according to exhibit "SKK7", the Applicant has already paid the fine imposed on him. 
5. Mr Koroma deposes further, that the appeals filed have realistic chances of success and that the first one, raises serious questions of Law. It would therefore amount to grave injustice where the Applicant to succeed in his appeal, after serving an appreciable amount of time behind bars before this happens. Also, the Applicant will not be compensated for time spent behind bars, if his appeals were to succeed. Other points raised by Mr Koroma in his affidavit, are that the Applicant is a member of the Association of Certified Accountants, and that the conviction means he 

can no longer practice his profession unless he succeeds on appeal. As such, he is very much interested in the appellate process and would not leave the jurisdiction of this Court until it is over. The Applicant is a family man - married with a daughter of 1 year 8 months. All of this shows that he is unlikely to flee the jurisdiction if granted bail.

MR JAWARA'S AFFIDAVIT IN OPPOSITION

6. The Application is opposed by the State-Respondent and it has filed an affidavit in opposition deposed and sworn to by Mr Musa Jawara, Acting Chief of Investigations at the Anti-Corruption Commission. Mr Jawara deposes that the affidavit in support of the Application does not disclose any exceptional circumstance justifying bail pending appeal. Mr Koroma's affidavit, according to him, *"is lacking in every material particular evidence that the appeal will be unduly delayed or unnecessarily protracted."* Further, that there is no evidence that the *"...Applicant will serve a substantial portion of his sentence in prison before the appeal is heard."* He deposes further that the Applicant had made an earlier Application to the Court below, and that that Application had been dismissed. The reasons for that decision have not been exhibited to his affidavit.

ARGUMENTS OF COUNSEL

7. In his arguments before us, Mr Koroma relied on the entire contents of his affidavit. He emphasised the point of Law canvassed in the first appeal: whether having found that the bank account from which the sum of Le66,399,670/31 referred to in Count 2 of the Indictment was debited, was not a Donor account, the Learned Trial Judge could go on to find the Applicant guilty of dishonestly appropriating Donor funds. Mr Koroma argued further this was a ground which would have a realistic chance of success when the appeal is heard. As was pointed out in the case of Cr App 1/2012 - IBRAHIM BAH v STATE Judgment delivered 7 February, 2012, that is an entirely subjective point of view. What matters is whether the Notice of Appeal, or, the Notice of ^{Application for} Leave to Appeal, discloses good and arguable grounds of appeal. We would look at the strength of the grounds of appeal. If on its face, the Notice of Appeal does not disclose what we would consider to be good grounds which should

warrant consideration by the Court of Appeal, we would obviously refuse an application for bail pending appeal.

8. We think the ground of appeal we have referred to above is a very good ground of appeal and merits consideration by this Court. It deals with an important legal principle: to whom does money in a bank account belong? And if a trial Judge has found that the account in question was not one held by the person or entity whose monies were said to have been misappropriated, can he go on to find the person charged, guilty of misappropriating monies belonging to that person or entity? These are all matters which we think merit the attention of this Court. The Notice of Application for Leave to Appeal against Sentence also raises important issues which we think, ought to be determined by this Court.
9. As the Court pointed out in the IBRAHIM BAH case cited above, and also cited by Mr Macauley during the course of argument, "5.....Section 67(2) of the Courts' Act, 1965 which governs this Application, provides that: *"The Court of Appeal, or the Court before which he was convicted may, if it deems fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal..... To help this Court determine whether 'it seems fit' to grant an appellant bail, this Court would look, as I have stated above, at the strength of the grounds of appeal, and the likelihood that the appellant would have served a substantial part of his sentence before his appeal has been heard."*
10. We agree with Mr Macauley that it is unlikely, in the nature of things that the Applicant would have served a substantial portion of his sentence before the appeal is heard, though not necessarily before judgment is delivered. In this respect, Mr Koroma was about to refer to the criminal cases in which Judgment is still pending on appeal, though the appeals have been argued, when we pointed out to him, that in those cases, the Appellants were all granted bail pending appeal. Another distinction is that none of those appellants in those appeals, were sentenced to a term of imprisonment together with the imposition of a fine. And in the only case (other than the case of THE STATE v TAJU-DEEN in the High Court) we are aware of in which the accused persons were sentenced to a term of imprisonment and to payment of a fine, was the Cocaine case - THE STATE v ARCHILLA & OTHERS, the 4th accused Mohamed Sesay was refused Bail pending appeal on Application made to

the trial Judge, simply because Mr Sesay had refused to pay the fine imposed on him. Here, we have been presented with evidence that the Applicant has paid the fine levied against him.

11. Mr Macauley also cited to us the old case of TUNWASHE v R [1935] WACA 236 where the Court held that "*Bail will not be granted pending appeal save in exceptional circumstances, or where the hearing of the appeal is likely to be unduly delayed.*" As was pointed out to Mr Bah, the Acting DPP in the IBRAHIM BAH Case at paragraph 7 of the Judgment of the Court, in which case, he had also relied on the absence of exceptional circumstances as justification for the refusal of bail pending appeal, "*As I have stated above, this is a criminal appeal, and not a civil appeal. Exceptional circumstances are criteria applicable to applications for stay of execution of judgments in civil proceedings, and not to criminal matters.*" The TUNWASHE Case was cited by the Court solely in relation to the argument as to whether the Appellant in that case would have served a substantial portion of his sentence before his appeal was heard. Paragraph 6 of that Judgment makes it clear that this was what was meant.

12. Another case cited us by Mr Macauley, was Supreme Court Misc App 6/2001- TAJU-DEEN v STATE, Judgment delivered by ADOPHY, JSC on 19 July, 2001 in which that Court refused the appellant bail pending appeal. As would have been noted, there was no appeal before that Court at the time. What had happened there, was that the Court of Appeal had refused the Appellant bail pending appeal, and had ordered that the appeal be heard speedily. What the Supreme Court had to decide in that matter, was whether the Order made by the Court of Appeal that the Court Record be prepared within 21 days of the of that Order, was sufficient to ensure that the appeal would be heard speedily. The Supreme Court by its decision, in effect, held that that should suffice to ensure that the Record would be prepared, and the appeal listed for hearing ~~heard~~ within a short time. The Appellant was eventually released on bail when the appeal came up for hearing in this Court in exercise of the Court's powers under Sub-Rule 53(7) of the Court of Appeal Rules, 1985. That was a case also, in which the Appellant was sentenced to a term of imprisonment, and to payment of a fine.

13. Mr Macauley has also provided for our attention, a copy of an extract from what appears to be one of the older editions of ARCHBOLD. He has not stated which particular edition it is, but the citation is the same in the 35th edition which we have. He has highlighted the portion which states that "*The granting of a certificate by the judge of the court of trial that the case is a fit one for an appeal is not in itself a sufficient reason for granting bail.*" The law and practice then, and still is, we believe, in England, that where there were weighty and compelling grounds of appeal, the trial Judge would himself grant a certificate that an appeal ought to be heard. Sub-Section 57(1)(b) of the Courts' Act, 1965 as amended, makes the same provision. Notwithstanding the fact that the Courts in England would look to see whether there are exceptional circumstances warranting the granting of bail pending appeal, the modern practice also seems to be, according to the Learned Editors of BLACKSTONE'S CRIMINAL PRACTICE, 2003 Edition paragraph D24.11 at page 1672 that "*.....if, however, the grounds of appeal are prima facie very strong, that is an argument for the court, in its discretion, allowing bail.*" This is the position we have also taken in this case.
14. The powers of this Court to grant bail pending appeal, are as set out in Sub-Section 67(2) of the Courts' Act, 1965 and in Sub-Rule 53(1) of the Court of Appeal Rules, 1985. The words used in those provisions are clear enough, and no gloss ought to be put on them. A very wide discretion is conferred on this Court, and as in the case of all discretionary powers conferred on Courts, the requirement is that they be exercised judiciously. The case of TUNWASHE was decided long before the coming into force of the Rules of this Court. It is still good law in the respect stated above. But it cannot circumscribe or restrict the discretion granted to this Court by the words in sub-section 67(2) cited above: "*if it seems fit*".

CONCLUSION

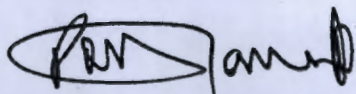
15. We have carefully examined the merits of this Application, and it is our view that they deserve the exercise of our discretion in favour of the Applicant. Part of the sentence imposed by the Court below has been satisfied: the fine imposed has been paid.

16. We would therefore grant Bail to the Applicant, pending the hearing and determination of the appeals filed, on the terms stated below.

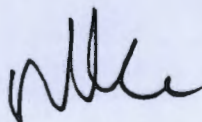
ORDERS

17. Bail is granted to the Applicant in the following terms:

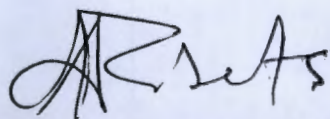
- i. The Applicant shall enter into a Recognisance in his own name in the sum of Le200million
- ii. The Applicant shall also procure one surety who shall also enter into a Recognisance in the sum of Le200million.
- iii. The Applicant shall surrender his passport or all passports or other travelling documents in his possession, to the Registrar of this Court, the same to be kept by the Registrar until the determination of the Applicant's respective appeals to this Court. The Applicant shall not leave Sierra Leone without an Order from this Court
- iv. The Applicant shall Report to the Registrar of this Court every Monday, Wednesday and Friday, until the respective appeals are finally determined, subject to further Order of this Court.
- v. This Order shall be served on the Chief Immigration Officer for the purpose of distribution to all border posts and entry points into, and exit points, from Sierra Leone.



THE HONOURABLE MR JUSTICE P O HAMILTON, JUSTICE OF THE
SUPREME COURT



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE, JUSTICE OF APPEAL



THE HONOURABLE MR JUSTICE E E ROBERTS, JUSTICE OF APPEAL