C R. APP 5&6/202J

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## IN THE COURT OF APPEAL OF SIERRA LEONE

r **CRIMINAL DIVISION)**

## Id THE M ATTER OF AN AP?LICATION FOR BAIL PENDING THE HEARING P.ND DETERMINATION OF THE APPEAL PURSUANT TO ORDER 67 (2) OF Td E COURTS ACT NO. 31 OF 1965

b TWEEN:

ALFRED PALO CO HEH

AND THE STATE

- APPELLANT/ APPLICANT

- RESPONDENT

O R AM:

THE HON. MR. JUSTIC E A. I.SESAY JA - PRESIDING Th E HO - tv1s. JUSTIC E F. B. ALHADI JA

THE HON. MRS. JUSTIC E T. BARNETT J

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## RULING DELIVERED THIS */i,J* DAY OF AUGUST 2020

ll troduc tio n a nd Ba c kg round

C n the 1 5 th day of Ju ly 20 20 the App ella nt/ Ap p lic a nt filed a otice *r;* Motion dated the l 41h d a y of July 2020 se e Kin g th e fo llo w ing t ,rd ers:

l . Th a t the C o u r t do g ra n t bail to Major (Rtd) Alfre d Palo Conteh, the App lic ant here n, pending the hearing and determination

of his Ap p eal to thE: C o u rt of Appeal pursuant to Section 67 (2) of the Cour ts Ac t No. *i3*l of 1965.

2. Any further or o ther o r d e r/ s that the Court may deem fit and just.

l r e application was supported by the Affidavit of Major (Rtd) Alfred r u lo Conteh sworn to on the 14 th day of July 2020 together with four t ·> hi b it s attached thereto. Th e y include:

l ) Exhibit 11 APC l" w hi c h is a copy of the Magiste ria l charge sheet in the Pre lirn ina ry Investigation conducted in the Magistrate Court;

1. Exhibit "APC 2" which is a copy of an Indic tment dated 3ist

May 2020;

1. Exhi b it "APC 3" which is a copy of the Conviction Certificate which is undated and unsigned by the Master and Registrar of the High Court;
2. Exhibit "APC 4" wh,c h is a copy of the Notice of Appeal filed against the a fore m e n tio n e d conviction and se n t e nc e .

::::- ,,.. +h e 28 th day of July 2020 the Respondent filed and swore to an

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*::* n The 4rn day of AuQust 2020 the Applicant/ Appellant filed an

Affid a vit in Reply sworn to on the 3rd day of August 2020.

## S JMMARY O F SUBM ISSIO NS M ADE BY C O UNSEL FO R THE APPLIC ANT/ APPELLANT

l fle Ap plic a nt 's so lic ito r relied on the entire affidavit and argued that ti e two gro und s that fo rm e d the basis of the appeal are summary o ffe n c e s. The Ap plic a tio n was eventually made pursuant to Section 6 7 (2) of the C o u rts Act t"-lo 31 of 1965. He argued that the Applicant

*v.*as a first time offende, and that the Applicant has good grounds

0 ith good pro sp e c t of suc c e ss. According to hirn, the Respondent nos nothing to lose if the a p p lic a tio n is granted.

R 2li a n c e was a lso rT1a d e e>n the written and oral sub m issio n cited by

!he Ap plic ant' s o lici to r, Dr. A. 0. Conteh. He fu rtr" e r argued that the

*f* I plicant may have served his sentence before the appeal is heard. Cuunse l also referenced Section 79 of the Criminal Procedure Act f'Jc., 32 of 1965 and the notable cases of Ta ju - Deen v The Staie; and iY\tJstapha Amara v The Si a te Cr.App 4/ 1 3 .

Th :; Applicant filed an A fidavit in Re p ly sworn to on the 3rd day of AL g ust 2020. Counsel for the Applicant relied on the content of the s, d Affidavit in Reply. Counsel for the Ap plica nt, argued that cl cretion cannot be circumscribed or restric t the discretion of the Court. Mr. Joseph Kamara for the Ap plicant referred the Court to the srnd case of Mustapha Amara v The State Cr. App 4/13 where bail w JS granted pending appeal. He argued that the Applicant having se·· ve d 5 month.; in custody, is itself a substantial period served al eady. According to hirn, it is only after the expiration of the first 12 rn on ths that the next twe1ve months will be considered.

Ir, re sp e c t of the psychc)lo gic a l impact the Ap p licant may suffer if

:;;·o n ted bail pending an appeal as advanced by Counsel for the

..:. : · c c •Y . CoL.nse l Mr. \_1ose p h Komara had this to say: "let us out

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d we will not c omploin." He further submitted that there is no

<' () m m i tment on the pari of the State to bring out the records of the C:)Urt trial; which will trigger the appeal and as such he asked that rl e Applicant be put on bail pending appeal.

**,S\_UMM ARY OF SUBM ISSIONS MADE BY COUNSEL FOR THE RESPO ND ENT**

Tl e Respondent filed an affidavit in opposition sworn to on the 28th d :JY o f July 2020. Counsel relie d on the entirety of the said affidavit, e,pecially paragraph 6 to 11 and also referred the Court to the case o lshaka Sylvesier Menjor v The State. In arguing his case, Counsel fc r the Re sp o n d e n t subrnitted that Se c tio n 67 (2) of the Courts Act a fo re sa id gives the Court discretion which must be exercised iL diciously and in doing so, the Court cannot shut its eyes on the fa c t th a t the Applicant is not c/trial Applicant as he had been convicted

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and sentenced. He further submitted that if the Applicant is to sL1 c c e e d , he must shovv that unusu a l/ e xc ep tional circumstances

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*(* e xist.

C ounse l furt.her advanced that the Applic ant having served 5 rnonths out of 24 mon1hs, does not mean that he has served a SLJ b sta ntia l p ortio n of his sentence to warrant him being put on bail p 2nd ing appecd. Reference was made to the case of Rex v

, he o p h ilus Adenuga Tunwashi.

## THE LAW

S!: Ctio n 67 (2) of the Courts Act No. 31 of 1965 states that:

## "the Court of Ap peal or the Court before whom he was convicted rr.a y, if it seems fit, on the application of an appe llant, admit the a \_Jpellant to bail pending the d e te rmination of his a pp e a l."

r the le a d ing Sierra Lecnean case of: Honourable Mr. Justice M.O.

::\_Ji -.J- Deen v The State [2001] (unreported) The Hon. Mr. Justice N. D.

.\ hadi J.A. stated that, "the law has been consistent in its principle

tr at bail will not be granted pending the hearing of an appeal

u.1le ss the Appellant sho *N* special circumstances why bail should be g anted." The decision of the Court of Appeal in the Ta ju -Deen case was later upheld by the Supreme Court thereby endorsing the p inciples which the Court of Appeal had applied contrary to what learned counsel JF Kamara for the applicant submitted.

Tl ere is therefore no questio n whether a convict can be released on o Jil. Counsel for the Sta te submitted that the recognized and well

e-tablish e d test when considering whether or not to grant bail p 5nding appeal, is whether there are exceptional and unusual ci cumstances.

VY h a t then are exc ep tio nal and unusual circumstances? It is th e view

01 the Court that the exp ressio n 'exceptional and unusual

ci c umsta n c e s' in the c ,o 1 xt of application for bail pending appeal

r 1e a n s circumstances where on the other hand, it appears prima f<Jc ie that the appeal is like ly to be successful or on the other hand, v.1he re there is a risk th a t the sentence will have been served by the

*I* ii'lle theappeal is hearc,. Obviously, the burden to prove

exc e p tio n a l circumstances, warranting the Applicant to be put on t ail pending appeal; unlike in an application in a trial Court where tl1e burden to show that the interest of justice militates against

rra ntin g bait is on t h e Sta te . This is because before conviction, a

r= e rso n is presumed innoc ent whereas upon convic tio n, there is no r= resu m p tio n o f inn oc enc e.

T 1e Court had then followed closely the principles laid down in the R y Tu nw a sh e casi2 of [l 935) 2 WACA which is also summarized as thus: " tha t bail will not be granted pending an appeal save in E- xc e p tio n a l c irc um sta n c e s or where the hearing of the appeal is Ii( ely to be und uly delayed" and

·· n o t in d ealing with the la tter case the Court will regard not only in 111e length of time which must elapse before the appeal can be r eard but also to the length of the sentence to be appealed from c nd further these two n1atters will be considered in relation to one

c.. n o th e r. "

## ,t. NALYS IS AND FIN DING S

*T* 1e Court has closely examined the said Notice of Motion and its c ffid a vit in su p p o rt, the affidavit in opposi tion, the reply; and the oral s1 Jb m issio ns of Counsel. The question that therefore follows is: firstly, v 'he th er the Applicant/ Appellant has shown any sp e c ia l/ e xc ep tio nal circumstance/s that would deem it fit for this tri b u n a l t o grant bail per1d in g appeal?

L a d in g C o u n se l fo r thei Applicant/ Appellant, Dr. A. 0. Conteh c rg ue d that exhib it " APC 4" which is the Notice of Appeal manife sts

c rguable ground and good success of appeal; especially when one 1, Jke s into consideration the time between the pronouncement of t 1e judgment and the date of hearing the appeal.

/ ccord in g to the Resrondent's solicitor, the Applicant has not s Jtisfied this im p orta nt req uire m en t. Also, there must be prima facie c ood grounds of appeal to warrant a grant of bail pending appeal.

1e Co urt does not think that expressing the view that the grounds of c p p e a l are good and are likely to succeed will on its own constitute s ) e c ia l/ e xc e p tio na l circumstances. As the Hon. Mr. Justice P.O.

/- a m ilto n JSC pointed out in lshaka Sylvester Menjor v The State *I* )Q l 5] (u nre p o,·te d ), 'the strength of the grounds must be c iscernable prima facie. That is, even before they are argued, the

c ro und s must suggest t at some serious flaw was committed by the c ourt b elow ." From the facts and evidence before this court, nothing

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f as been exhib ite d th a t sp ring s up in our faces to show that there f as been a bre ac h of the law by the lower court. Th e re, n \_gthin g to s Jg g e st t h a t th e sentences handed down where illegal or w- ron--g=- in

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-r · 'l c i p l e .

r 1is is not to suggest that the arguments articulated are not strong c nd good grou1ds; but on the face of it they are not exceptional lrom other previous cases to be considered or deem fit to grant bail. V *le* have no doubt that the grounds and strength of them will be

r ui lt on for a rg um ents in the determination of the appeal.

S.=c o n dl y, would the A plicant/ Appellant have served a substantial

r. art o f his se n te n c e by t h e time the appeal is heard? Counsel for the *I* pplic ant/ Ap p e lla nt su b m it te d that his client has already served 5 r11o n ths in custody and, v hic h is of itself, a su b sta n tia l period of time.

I e sa id tha t it is only otte r the expiration of the first 1 2 months that 1l1 e next 12 m on th s will be considered.

J Jdg in g from the exp e d itio usn ess of the trial in the High Court, the 11 i b u na l is confident tho a consid e ra b le proportion of the sentence v ill not be se rved before th e appeal is heard. Furthermore, as

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 p o in te d out in the case of Ibrahim Bah v The State (2012]

( Jnreported), Mr. Justice Browne-Marke said that "the manner in

vvhic h appeals are he,a d by the Court of Appeal since 2004 means

t ,at unless there is a delay on the part of Counsel on both sides, or a

, r e m b e r of the tribunal is absent, an appeal should only be heard

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c n two days: the first day for the tribunal to give directions for the f lin g of synopsis by either side; and on the 2nd day, for the oral I earing during which Counsel on either side may add to the written s Jb m issio n s. 11

Also , in the Taju-Deen case, the sentence was for a year; whilst in this c a se , it is 24 rnonths which is sig ni fic a ntly long er. Therefore, the c1rg um ent that the ,Applicant/ Appellant would have spent a s J b sta n tia l portion of term imprisoned is not convincing.

F u rth erm o re, the Court does not think that Counsel for the h p p lic a n t / Appellant sho u ld dismiss or overlook the suggestion that eing released on bail pending appeal; and the possibility of the

:::::::oe c:, o e c o m 1n g u n su c c e ssful, the trauma that could cause. Such on eventuality could t1a ve more damaging, psychological and

E. m o t io n a l impact on t, h3 Applicant/ Appellant and his family. On the

, c the r hand, per Browne-Marke JSC (supra) 'that fact that an

1\p p e lla nt has remained in custody pending his appeal could induce c r incl ine a Court, in the event that it dismisses his appeal, to exercise r1erc y and reduce such an Appellant's sentence.'

l l1e Court should also not lose sight of the fact that Mr. Conteh has b een convicted and is serving a sentence of the court. Counsel may

, c rg ue that the offences are summary; but they do not take away t1e seriousness of them. We have to take into account the fa c t that t ,e Applicant/ Ap pella r,t is a trained former military officer, of the r .Jnk of a Major. He was not only convicted with the offence of I aving a loaded gun in his possession in a public place; but he was c o n victed on the b asis on having kept a greater number of small cirm s t h a n was speclfi'kd on his licence. These are relevant

c o n sid e ra tio ns 1h a t are serious and cannot be swept under the c arp et;

oncl usio n

Ii is all of the above thcit must be taken into account in deciding v1hether bail pending appeal should be gra n te d. The Court has c a re fu lly looked into the issues raised and the arguments for and c gainst and decided thot the application ought to be dismissed. Th e C o u rt is not convinced that there are special/exceptional circ um sta nc e s t h a t have been shown to warrant bail being granted. T 1e application is therefore Dism isse d .

F JRT HER ORDERS

1 . The Court directs that the Records be prepared and cause same to be put befo re the Chief Justice for assignment within 7 days from today's Ru lin g .

1. The Ap plic a nt/ Appellant, Alfred Palo Conteh should be permitted to have 2 (Two) hours of exercise a day.
2. Alfred Pa lo Conteh should be allowed to see his fiance and son twice a week. Th e y should have access to see him at the Special Court premise s.
3. He should have access to personal books and magazines to read.
4. He should have medical attention/access to a doctor as and when needed.
5. He sh o uld have access to his le g a l counsel (one at a time).

The Hon oura b le Mr. Ju sti c e A. I. Ses stice ofAppeal PRES1-:)1,'1er

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The Honourable Ms. Justi c:A F. B. Alhadi , Justice of Appeal

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r ,e Honourable Mrs. Jus1ic e T. Barnett , Judge of the High Court

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