CR. APP NO. 4/2022
IN THE COURT OF APPEAL OF SIERRA LEONE

IN THE MATTER OF AN APPLICATION FOR BAIL PENDING THE HEARING OF THE APPEAL AT THE COURT OF APPEAL FILED FOR AND ON BEHALF OF RANDY SKEIKY, THE APPELLANT

IN THE MATTER OF AN APPLICATION FOR BAIL PENDING THE HEARING OF THE APPEAL PURSUANT TO SECTION 67(2) OF THE COURTS ACT 1965 AND SECTION 79(4) OF THE CRIMINAL PROCEDURE ACT 1965

Between: **RANDA SKEIKY** - Appellant/Applicant

And : **THE STATE** - Respondents

CORAM
HON. MR JUSTICE ALLAN B. HALLOWAY JSC
HON. MRS JUSTICE JAMESINA E.L. KING JA
HON. MR JUSTICE KOMBA KAMANDA JA

COUNSEL
M.P. FOFANAH ESQ. for the Appellant/Applicant
A. JALLOH ESQ. for the Respondents

RULING
Delivered this 19th **day of** July **2022**

The Application herein, filed for and on behalf of RANDA SKEIKY the Appellant/Applicant, by way of a Notice of Motion dated the 16th June 2022, is principally for this Court to grant an Order admitting the Appellant/Applicant to Bail, pending the hearing and determination of her appeal at this Court.

In support of the said application, is the affidavit of MOHAMED PA-MOMO FOFANAH sworn to on the 16th June 2022, to which said affidavit is annexed **Exhibit B**, being the Indictment filed, for which the Appellant/Applicant was convicted, **Exhibit C**, being the Judgement of the High Court dated 14th June 2002 delivered by the **HON. MR JUSTICE ALHAJI M. STEVENS JA**, convicting the Appellant/Applicant of the offences charged in **Exhibit B** aforesaid, the said conviction for

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which the appeal herein was filed and **Exhibit D,** being the Notice of Appeal filed against the conviction aforesaid. In further support of the application aforesaid, is the Supplemental affidavit of MOHAMED PA-MOMO FOFANAH sworn to on the 27th June 2022 and in opposition to the said application is the affidavit of ARUNA JALLOH sworn to on the 20th June 2022.

The facts are that on the 14th June 2022, RANDA SKEIKY, the Appellant/Applicant herein was convicted of Two (2) Counts of the offence of Larceny in a Dwelling House contrary to Section 13(a) of the **LARCENY ACT 1916** and the offence of Larceny by Servant contrary to Section 17(1) (a) of the **LARCENY ACT 1916** respectively and sentenced to Three (3) years imprisonment on each Count aforesaid, the same to run concurrently. The said Appellant/Applicant appealed the conviction aforesaid by way of a Notice of Appeal dated the 14th June 2022 and by way of the Notice of Motion herein, the said Appellant/Applicant has applied for her to be admitted to Bail pending the hearing and determination of the Appeal. Having heard M.P. FOFANAH ESQ. of Counsel for the Appellant/Applicant and having also heard A. JALLOH ESQ. of Counsel for the Respondents on the application aforesaid and considered same, this Court had recourse to Section 79(4) of the **CRIMINAL PROCEDURE ACT 1965** pursuant to which the application herein was made, the same which provides thus:

'A person may be admitted to Bail at any time and thereupon shall be discharged from custody or prison if he is not detained for any other cause'.

Clearly, the provision aforesaid, merely entitles one to be admitted to Bail at any time including being admitted to such Bail pending an appeal. It confirms the fact that it is not only at the time after one has taken a plea after being arraigned and either awaits Trial of the offences charged or when he awaits sentence after being convicted of some offences charged. One can be admitted to Bail even after sentence and awaits the hearing and determination of an appeal to a conviction of some offence (s) charged. However, it is Section 67(2) of the **COURTS ACT 1965,** another provision pursuant to which the application herein is made, which is the relevant provision that indicate the circumstances under which one can be admitted to Bail pending an appeal, Section 67(2) aforesaid, which provides thus:

'The Court of Appeal or the Court before whom an Appellant was convicted may, if it seems fit, on an application of an Appellant, admit the Appellant to Bail pending the determination of his appeal'.

As stated by the **HON. MR. JUSTICE NICHOLAS C. BROWNE MARKE JA** (as he then was) in the case between **MUSTAPHA AMARA** and **THE STATE,** CR. APP. 4/2013 in the Court of Appeal of Sierra Leone (unreported), **'the words used in the provision above are clear enough and no**

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gloss ought to be put of them. A very wide discretion is conferred on the Courts, the requirement is that they be exercised judiciously'. He stated that **'to help this Court determine whether 'it seems fit' to grant an Appellant Bail, this Court would look at the strength of the grounds of appeal and the likelihood that the Appellant would have served a substantial part of her sentence before his appeal has been heard'**.

M.P FOFANAH ESQ. of Counsel for the Appellant/Applicant submitted that the Appellant/Applicant has good grounds of Appeal the same which is contained in the Notice of Appeal dated 14th June 2022 and marked **Exhibit 'D'** annexed to the affidavit of MOHAMED PA-MOMO FOFANAH sworn to on the 16th June 2022 and deposes in the said affidavit that he verily believes that **Exhibit 'D'** aforesaid, has a realistic prospect of success, as the grounds therein are serious and raise grave and significant questions and errors of law and fact. In the case between **ISHAKA SYLVESTER MENJOR** and **THE STATE**, CR. APP. 2/2015 in the Court of Appeal of Sierra Leone (unreported), the **HON. MR. JUSTICE REGINALD S. FYNN JA** stated thus:

'However by merely stating that the grounds of appeal are good and are likely to succeed will not by itself constitute exceptional circumstances. The strength of the grounds must be discernible prima facie. This means that even before they are argued, the grounds must suggest that some serious flaw was committed by the Court below'.

Exhibit 'D' annexed to the affidavit of MOHAMED PA-MOMO FOFANAH aforesaid, state inter alia, as a ground of appeal, that the Learned Trial Judge fundamentally erred in law in shifting both the burden and standard of proof from the Prosecution to the Appellant/Applicant facing a criminal prosecution and trial, when he claimed that the Appellant should have realized that she stood the risk to take responsibility, should have realized that she made a fatal and terrible mistake, that she did not act prudently and consciously as a reasonable person, when she conducted herself in certain ways, when obviously it was the Respondents who should have proved beyond reasonable doubt that the said Appellant/Applicant in fact conducted herself in these ways. Surely, if it is the case, as the Notice of Appeal aforesaid suggests, that the said Appellant/Applicant was convicted of the offences charged as a result of the claims aforesaid made by the Learned Trial Judge it would certainly be true to say, as another grounds of appeal, that the Learned Trial Judge erred in law to have therefore placed a reverse onus and burden of proof on the Appellant/Applicant to prove her innocence.

Exhibit 'D' aforesaid state further, as a ground of appeal that the Learned Trial Judge erred in law and fact to have excluded a fundamentally exculpatory evidence which was tendered and admitted in evidence at the Magistrate's Court whilst on committal proceedings there, namely an audio recording containing the voice message of PW1, ALIE ABESS, the complainant, sent on WhatsApp

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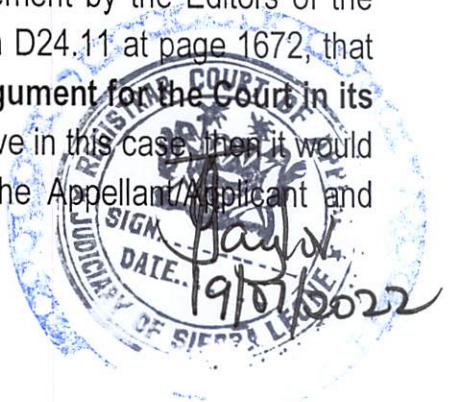
medium by him to the Appellant/Applicant on her phone the same which was contrary to Section 124 of the **CRIMINAL PROCEDURE ACT 1965**, which said provision requires that **'any documents and things which have been put in evidence at the committal proceedings at the Magistrate Court shall be transmitted in proper time to the High Court'**. A. JALLOH ESQ. of Counsel for the Respondents deposes in the affidavit in opposition of ARUNA JALLOH sworn to on the 20th June 2022 that the Trial Judge in a criminal matter which would include the matter herein, always has the discretion to admit or exclude evidence. It should be pointed out though, that such discretion, if at all, should be exercised judiciously, within the ambits of the law and the reason(s) for the exercise of such discretion to admit or exclude evidence should always be given and made absolutely clear. A. JALLOH ESQ. in the affidavit aforesaid, has not given and made absolutely clear, the reason(s) for the Trial Judges' exercise of such discretion to exclude the evidence aforesaid. Surely, if the audio recording aforesaid being a **'thing'** which should have been transmitted and which was indeed transmitted to the High Court was excluded by the Learned trial Judge from been put in the evidence adduced at the High Court without reason(s) being given why the same was excluded, a strong possibility exists that such evidence might have been evidence which would have raised a reasonable doubt as to the guilt of the Appellant/Applicant.

Clearly, it cannot be disputed that shifting the burden and standard of proof on the Appellant/Applicant and excluding evidence which might have raised a reasonable doubt as to the guilt of the Appellant/Applicant are factors which would tend to prevent the acquittal and discharge of the Appellant/Applicant. Consequently, the raising of these factors as grounds of appeal herein qualify as very goods grounds of appeal and merits consideration by this Court. They are factors dealing with important legal principles like the burden and standard of proof required in a criminal matter and the exclusion of evidence which could have raised a reasonable doubt as to the guilt of an Accused person. Undisputedly, these grounds of appeal have been discernible prima facie. In other words, it is the case that even before they are argued. they suggest that some serious flaw might have been committed by the Court below.

The relevant question, the answer to which seems to be controversial, is whether or not the Courts would have sufficiently **'seen it fit'** to grant Bail immediately when only good grounds of appeal have been shown. The **HON. MR. JUSTICE NICHOLAS C. BROWNE MARKE JA** (as he then was) in the case between **MUSTAPHA AMARA** and **THE STATE,** cited above, took the position that all that needs to be shown for Bail to be granted in that case was the Applicant showing goods grounds of appeal and in support of such position relied on the statement by the Editors of the 2003 Edition of **BLACKSTONE'S CRIMINAL PRACTICE** at paragraph D24.11 at page 1672, that **'if the grounds of appeal are prima facie very strong, that is an argument for the Court in its discretion, allowing Bail'**. If this Court were to follow the decision above in this case, then it would have at this stage, determined the application herein in favour of the Appellant/Applicant and



admitted her to Bail. It would however refrain from doing so at this stage, by reason that from a plethora of cases decided in our jurisdiction on the same issue as in this matter, the Courts have consistently determined whether **'it seems fit'** to grant an Appellant Bail, by looking at the strength of the grounds of appeal and the likelihood that the Appellant would have served a substantial part of her sentence before his appeal has been heard. In the case between **ISHAKA SYLVESTER MENJOR** and **THE STATE,** cited above, the **HON. MR. JUSTICE REGINALD S. FYNN JA** had this to say:

'When considering an application for Bail pending appeal, the test set out in the case R v WATTON is the crucial litmus for the presence of 'exceptional circumstances', (i) does it appear prima facie that the appeal will succeed? (ii) Is there a risk that the sentence would have been served by the time the appeal is complete? It is when both of these questions are answered in the affirmative that the Courts will be persuaded to 'seem it fit' to grant Bail pending the appeal'.

It is seen from the analysis above that the first question posed above has been answered in the affirmative in that, it does appear prima facie that the appeal herein will succeed. As regards the second question posed, a review of the plethora of cases aforesaid, suggest that the Courts will be persuaded to **'seem it fit'** to grant Bail pending the appeal when it is shown that there is a risk that sentence would have been served by the time the appeal is heard, rather than by the time the appeal is complete as stated by the **HON. MR. JUSTICE REGINALD S. FYNN JA** in the excerpt above from the case between **ISHAKA SYLVESTER MENJOR** and **THE STATE** cited above. This Court finds that even though the **HON. MR. JUSTICE REGINALD S. FYNN JA**. in the said case cited above, stated that the Courts will be persuaded to **'seem it fit'** to grant Bail pending the appeal when it is shown that there is a risk that sentence would have been served by the time when the appeal is complete, he seems to have been persuaded to **'seem it fit'** to grant Bail by considering when it was shown that there is a risk that sentence would have been served by the time the appeal is heard.

This Court holds the view that the correct position is that the Courts should be persuaded to **'seem it fit'** to grant Bail pending appeal when it is shown that there is a risk that sentence will have been served by the time the appeal is complete rather than by the time the appeal is heard, by reason that, not only is it is a fact that in accordance with Section 67(2) of the **COURTS ACT 1965,** the Court are empowered to admit the Appellant to Bail pending the determination of his appeal, it is the case also, that an application for Bail in the circumstances is one made pending the hearing and determination of the appeal and not one made pending the hearing of the appeal. It cannot be disputed that there is a clear distinction between the hearing of an appeal and the determination of it. Surely, if the Courts should be persuaded to **'seem it fit'** to grant Bail only when it is shown that

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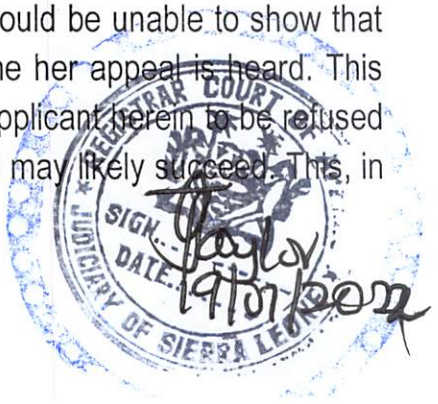
there is risk that sentence will have been served by the time the appeal is heard, the grant of Bail in the circumstance would be tantamount to a grant of Bail pending the hearing of the appeal, so much so that as soon as the appeal is heard, Bail would come to an end and in the circumstance, an Appellant would have to be returned to prison pending the determination of the said appeal. Conversely, if in the same circumstance Bail is refused, the Courts would have no reason to refuse Bail on an application in this regard at or after the appeal is heard. A clear authority for this Courts' proposition above could be found in the statement of the **HON. MR. JUSTICE NICHOLAS BROWNE-MARKE JA** (as he then was) in the case between **MUSTAPHA AMARA** and **THE STATE,** cited above that, in the case between the **HON. MR. JUSTICE M.O TAJU-DEEN** and **THE STATE**, Misc. App. 6/2001 in the Supreme Court of Sierra Leone (unreported) where the Court refused the Appellant Bail pending the appeal, the said Appellant was eventually released on Bail when the appeal came up for hearing at this Court even though this Court itself had initially refused Bail and ordered that the appeal be speedily heard.

This Court holds the view that the cumbersome scenario outlined above, is just one reason why it is necessary for the Courts to be persuaded to **'seem it fit'** to grant Bail when it is shown that there is a risk that sentence would have been served by the time the appeal is complete. Another reason could be found in the case between **IBRAHIM BAH** and **THE STATE**, CR. APP. 1/2012 in the Court of Appeal of Sierra Leone (unreported) where the **HON. MR. JUSTICE NICHOLAS C. BROWNE-MARKE JA** (as he then was) had this to say:

'The manner in which appeals have been dealt with by this Court, since at least 2004 indicate that it is unlikely that any Appellant in a criminal appeal and who has been sentenced to a term of imprisonment without the alternative of a fine would have spent a substantial portion of his sentence before his appeal is heard'.

This Court holds the view that the situation above as expressed by the **HON. MR. JUSTICE NICHOLAS BROWNE-MARKE JA** (as he then was) is still prevalent to this day. Documentary exhibits, do not have to be retyped, they are photocopied. The only bit of the records that would have to be retyped is when the evidence adduced in Court is contained in the hand written notes of the Trial Judge and the retyping of this is unlikely to take much time. Once the records are ready the **HON. CHIEF JUSTICE** will assign the appeal to a panel for hearing. If this is the case, then it would be the case that an Appellant would almost always be refused Bail pending appeal by reason that it would be difficult to show that there is a risk that sentence will have been served by the time the appeal is heard. Surely, the Appellant/Applicant herein would be unable to show that there is a risk that sentence will have been served by her by the time her appeal is heard. This Court holds the view that it would be grossly unfair for the Appellant/Applicant herein to be refused Bail when she has shown a prima facie good grounds of appeal which may likely succeed. This, in



our view is justification enough for the position taken in the case between **MUSTAPHA AMARA** and **THE STATE**, cited above by the **HON. MR. JUSTICE NICHOLAS C. BROWNE-MARKE JA** (as he then was) that all that needs to be shown for Bail to be granted was the Applicant showing goods grounds of appeal.

This Court holds the view that, in an application for Bail pending appeal, it should be persuaded to **'seem it fit'** to grant Bail, when it is shown that there is a risk sentence will have been served by the time the appeal is complete and not by the time the appeal is heard, as has been stated above. As determined above if consideration is given only to the time when the appeal is heard, it would almost always be the case that an Applicant would never succeed on an application for Bail. It cannot be disputed that it is almost impossible for the same thing to be said, if consideration is given to the time when the appeal is heard and determined. It should be pointed out that whereas an order that an appeal could be speedily heard can be made and enforced, it is almost impossible for an order that an appeal be speedily determined could be made and enforced. This being the case, the time frame for an appeal to be determined is almost always impossible to determine, making it the case that it is likely that by the time the appeal herein is determined, the Appellant/Applicant would have served the Three (3) years sentence imposed on her. In this regard, this Court holds the view that there is a risk that the sentence aforesaid imposed on the Appellant/Applicant would have been served by the time her appeal is complete.

Having determined that it does appear prima facie that the appeal herein will likely succeed and that there is a risk that the sentence of Three (3) years imposed on the Appellant/Applicant would have been served by the time her appeal is complete, the Appellant/Applicant is entitled to be granted Bail pending the hearing and determination of her appeal at this Court by reason that both questions posed as outlined in the case between **ISHAKA SYLVESTER MENJOR** and **THE STATE** by the **HON. MR. JUSTICE REGINALD S. FYNN JA** have been answered in the affirmative. It should however be pointed out that in its quest to do justice, consideration should be had to the fact, that even though it technically cannot be said that the liberty of Appellant/Applicant is being violated, if she is not granted bail, by reason that her incarceration in a correctional center, was due to the execution of a lawful order convicting her of certain criminal offences, the said Appellant/Applicant would have suffered grave injustice if she is not admitted to Bail now and her appeal herein eventually succeeds, the said Appellant/Applicant who may not be compensated for her time spent in prison. On the other hand, **THE STATE** would have nothing to lose, if Bail is granted now but the appeal of the Appellant/Applicant is dismissed eventually, because if such happens, the said Appellant/Applicant would have to return to a correctional center. It is in this regard, that the conditions for admitting the Appellant/Applicant to Bail must be such that it makes her unable to jump bail and is available to serve her sentence if her appeal is dismissed. This Court notes in particular the fact that MOHAMED PA-MOMO FOFANAH in his affidavit aforesaid, has

made it bold to depose that he has been assured by the Appellant/Applicant that she will not jump Bail or leave the jurisdiction if put on Bail by this Court, which said Court would want MOHAMED PA-MOMO FOFANAH to know that it relies on such a promise given to him by the said Appellant/Applicant but will be extremely disappointed if he does not ensure that the said promise is kept. .

This Court is also very wary of the fact that the likelihood of the Appellant/Applicant frustrating progress of the appeal is very much possible, when once she is admitted to Bail. In this regard, and in addition to ordering a speedy hearing of the appeal, this Court will make certain orders empowering the Respondents to apply if it can be shown that the said Appellant/Applicant is frustrating the hearing and determination of the appeal herein, this Court which will exercise its powers to revoke the order admitting the Appellant to Bail pending the hearing and determination of her appeal, pursuant to Rule 53(8) of the **COURT OF APPEAL RULES 1985**.

By reason of the above it is ordered that RANDA SKEIKY, the Appellant/Applicant herein, be **ADMITTED TO BAIL** pending the hearing and determination of the appeal filed on the terms as stated below:

1. That the said Appellant/Applicant shall procure Two (2) sureties who shall each enter into a recognizance of the sum of One Billion, Five Hundred Million Old Sierra Leone Leones (SLL1,500,000,000.00) or the sum of One Million Five Hundred Thousand New Sierra Leone Leones (SLL 1,500,000.00), the said sureties who must be Sierra Leoneans, resident in Sierra Leone and who are property owners in Sierra Leone of the same value as above, the said sureties who shall be approved by the Registrar of this Court.

2. That the Appellant/Applicant shall surrender her passport and all other passports or other travelling documents in her possession to the Registrar of this Court, the same to be kept by the said Registrar until the determination of the Appellant/Applicants appeal, the said Appellant/Applicant who shall not leave Sierra Leone without an Order from this Court.

3. That this order shall be served on the Chief Immigration Officer for the purpose of him ensuring that the Appellant/Applicant is not issued with a new passport other than the ones she would have deposited at this Court and for the purpose also of him distributing to all border posts and entry points into and exit points from Sierra Leone to ensure that the said Appellant/Applicant does not leave Sierra Leone.

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4. That speedy hearing of the appeal is hereby **ORDERED**, the records of the said appeal which must be settled within Three (3) weeks from the date of this Order.

5. That **LIBERTY TO APPLY** is hereby **GRANTED** to either party should it become necessary.

.....
HON. MR. JUSTICE ALLAN B. HALLOWAY JSC.

I agree.....
HON. MRS. JUSTICE JAMESINA E.L. KING JA

I agree.....
HON. MR. JUSTICE KOMBA KAMANDA JA

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JUDICIARY OF SIERRA LEONE
SIGN.
DATE. 19/07/2002