

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA (COA) AT KAMPALA**  
**CRIMINAL APPLICATION NUMBER 0066 OF 2017**

5 **KEEYA MATHEW ::::::::::::::::::::::::::::::::::::::: APPLICANT**  
**VS**  
**UGANDA ::::::::::::::::::::::::::::::::::::::: RESPONDENT**

**CORAM: HON. MR. JUSTICE S.B.K KAVUMA, DCJ** ✓

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**RULING OF COURT**

This Application is brought under, Section 40(2) of the Criminal Procedure Code Act, Cap 116 of the Laws of Uganda and Section 132(4) of the Trial on Indictment Act, Cap 23 of the Laws of Uganda, and Rules 6(2) of the Judicature (Court of Appeal Rules) Directions S1 13-10.

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The Application seeks for an order granting the applicant bail pending the determination of his Appeal No. 205 of 2017.

20 **Background**

The background to the Application is that on 30<sup>th</sup> May 2017, the applicant was charged with and convicted of the offence of Money Laundering c/S 116(1) (a) of the Anti-Money Laundering Act and sentenced to 10 years by the High Court Anti-Corruption Division.

He was also ordered to pay a compensation of \$250,000 to the victim Bank. The applicant appealed vide Criminal Appeal No. 205 of 2017 and filed this Application.

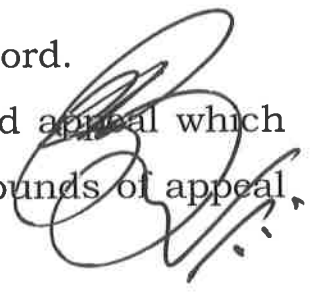
### **Representation**

5 At the hearing of the Application, Mr. Eric Muhwezi (counsel for the applicant) appeared for the applicant while Mr. Adrine Asingwire (Senior State Attorney) (counsel for the respondent) appeared for the respondent.

### **10 Grounds**

The grounds upon which this Application is premised are stated briefly in the Notice of Motion and laid out in detail in the applicant's Affidavit in Support of his Application and are that;

- 15 1. The applicant was charged on two counts in the Anti-Corruption Court with Money Laundering c/S 116 and 136(1)(a) of the Anti-money Laundering Act, 2013 and on the 30<sup>th</sup> May, 2017 was convicted on both counts and on each sentenced to imprisonment of ten (10) years to run concurrently and ordered to compensate the victim bank in  
20 the amount of \$250.000.
2. That the applicant has no previous criminal record.
3. That the applicant filed a Notice of Appeal and appeal which has high chances of success basing on his grounds of appeal, which mainly are that;-



i) The offences for which he was convicted are not the ones he was charged with in the amended indictment.

ii) Prosecution evidence based upon by the learned trial judge for his conviction was of accomplice witnesses which was false, uncorroborated, inconsistent and contradictory in respect of count 9 and hearsay in respect of count 10.

iii) The learned trial Judge improperly evaluated the evidence for the prosecution witnesses and of the applicant in his defence.

4. The applicant has since his conviction been in Murchison Bay Prison, Luzira and the appeal is likely to take some time to be heard as the court has high back-log of cases.

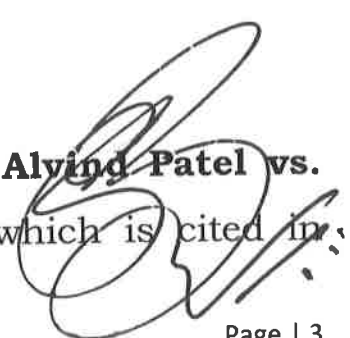
5. That the offences for which the applicant was convicted did not involve personal violence.

6. That the applicant has substantial sureties who are willing and ready to stand for him and shall abide by the reasonable terms set out for his release on bail.

7. That the discretion of the court be exercised in favour of the applicant and he be released on bail pending the hearing and determination of his appeal.

### **The case for the applicant**

Counsel for the applicant cited the authority of **Alyind Patel vs. Uganda Criminal Application No. 1 of 2003** which is cited in,



**Criminal Application Number 0042 of 2017 Shafiq Mubarak vs. Uganda** and submitted that the case sets the conditions' for grant of an application for bail pending appeal.

The Supreme Court in **Arvind Patel** (supra) also noted that the  
5 conditions need not all be present, two or more could suffice to warrant a grant of bail pending appeal.

Counsel submitted that the applicant is a first offender and the offenses of which he was convicted involved no personal violence. That there is a high likelihood of success of the Appeal according to  
10 the grounds of appeal stated in the Memorandum of Appeal.

The applicant presented three sureties namely;

1. Sentumbwe George William 36 years of age. He is a resident of Nakyesanja village. He is a secondary school teacher of Mbogo SSS which is in Wakiso District and he has a national ID  
15 which shows that he is a Ugandan citizen by birth and he is a friend of the applicant.
2. Omoit Luke, a resident of Kulambiro Central Kyanja Nakawa Division Kampala District. He is a school library supervisor at Makerere Business School of which he has got an identity  
20 card. He also has a National Identity Card Number 0019691123- CM66023100WZPA.
3. Macayidu Michael, a resident of Mutungo Parish LC1 Zone 3. He has a forwarding letter from the village LC1 and a National  
25 Identity Card Number 000063126 issued on 28th of August 2014.

Counsel submitted that he had explained to each of the sureties their obligations in this matter and they had understood the same. He prayed that the said sureties be found to be substantial and that bail pending the determination of his Appeal be granted to him on  
5 reasonable terms.

### **The case for the respondent**

In reply, counsel for the respondent opposed the application on grounds that the record that was served to the respondent is not  
10 complete, very many aspects of it were missing so the claim that the appeal has high chances of success was completely baseless. Also, that the amounts of money involved are colossal and bringing sureties with no documents to prove their financial standing should not be accepted. Counsel submitted that no exceptional grounds  
15 have been cited in this case by the applicant to justify the grant of bail pending appeal. He thus prayed that this Application be denied.

### **Consideration of the application**

I have carefully considered the submissions of both counsel, the  
20 evidence on record and the law applicable. The power of this court to grant bail pending appeal which, however, must be exercised judiciously (***See Walubiri Godfrey Vs Uganda Criminal Application No. 44 of 2012 Court of Appeal***) is undisputed.

The case of **Arvind Patel Vs Uganda** (*supra*) sets out some of the guidelines to be considered by court as special circumstances in granting or refusing to grant bail pending appeal to an applicant as follows:

- 5   **“(a) The character of the applicant.**
- (b) Whether he or she is a first offender or not.**
- (c) Whether the crime of which the applicant was convicted**  
      **involved personal violence.**
- (d) Whether the appeal is not frivolous and has a reasonable**  
10   **possibility of success.**
- (e) The substantial delay in the determination of the appeal.**
- (f) Whether the applicant has complied with bail conditions**  
      **granted after the applicant’s conviction and during the**  
      **pendency of appeal (if any).” (Sic)**

15   His Lordship Justice Oder JSC (RIP) observed in that case:

**“In my view, it is not necessary that all the conditions should**  
      **be present in every case. A combination of two or more criteria**  
      **may be sufficient. Each case must be considered on its own**  
      **facts and circumstances”.**

20   See also **David Chandi Jamwa vs Uganda** (*supra*) and **Gregory**  
      **Mugisha Vs. Uganda Criminal Reference No. 179 of 2001.**

It is evident that some of the conditions in **Arvind Patel** (*supra*) are present in the instant Application.

That notwithstanding, I am persuaded by the submissions of counsel for the respondent that there may be a danger of the applicant absconding once released on bail pending the determination of his Appeal.

5 He was sentenced to a long term of 10 years imprisonment, unlike in **Shafique Mubaraka vs Uganda** (supra) where the sentence was five years. He was further ordered to refund USD 250.000.000. The severity of these sentences, in the particular circumstances of this Application when considered as a whole, may tempt the Applicant  
10 to abscond from the jurisdiction of Court.

The applicant was on remand through the entire period of his trial at the High Court. It cannot, therefore, be said that he is an offender who observed any pre-conviction bail conditions imposed by court.

15 The record does not show any confirmation say by Local Council Authorities or anybody else of his area of residence that he is a known resident thereof. His sureties live long distances from where the applicant says he lives. This may pose a challenge in the sureties' effectiveness in ensuring that the applicant turns up to  
20 prosecute his Appeal once released on bail pending appeal.

Again, unlike in **Shafique Mubaraka vs Uganda** (supra) there is no evidence of the applicant being a sufferer from grave illness.

In these circumstances, I decline to grant this Application which accordingly stands dismissed.

**I so order.**

Dated at Kampala this 10 day of Nov 2017

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S.B.K Kavuma

**DEPUTY CHIEF JUSTICE**