

- [3] **In Col. (Rtd) Dr. Kizza Besigye Vs Uganda H.C.Crim. Application No. 83 of 2016** court observed that;
- “Originally bail meant security given to court by another person that the accused will attend trial on the day appointed. But now it includes recognizance entered into by the accused himself, conditioning him to appear, and failure of which may lead to warrant of arrest and confinement in prison till the trial of the case is heard and finalized.”*
- [4] **In Mellan Mareere Vs Uganda, Misc. Application No.52 of 2017 (C.A)**, Justice Christopher Madrama J.A outlined the conditions and or principles for grant of bail pending appeal as follows;
1. A convicted person who knows he or she has little chance of succeeding on appeal is unlikely to wait patiently to serve what might be a severe sentence of imprisonment. If bail is to be granted to a person serving a severe sentence, very stringent conditions must be imposed.
 2. Bail pending appeal may be granted when there are exceptional and unusual circumstances which depend on the facts of each case.
 3. Bail may be granted if it is unlikely that the appeal would be heard until the end or after the expiration of the sentence appealed against.
- These principles are more or less the same principles enounced in **Arvid Patel Vs Uganda S.C. Crim. Appeal No.1 of 2003**.
- [5] **In Chimambhai Vs R, (No.2) [1971] 1 EA 343**, it was observed that a person applying for bail pending appeal lacks one of the most important elements normally available to a person seeking bail before trial which is a presumption of innocence and in **Busiju Thomas Vs Uganda, S.C. Crim. Appeal No.33 of 2011**, court observed further that,
- “the presumption of innocence guaranteed to a person accused of a crime, ends when the accused person is found by an impartial court guilty of the offence charged with. From this point onward, the courts should not only take into account the rights of the convicted person, but also the interests of the victim and the society as a whole.”*
- [6] **S.40 (2) of Criminal Procedure Code** gives the appellate court discretionary power whether or not to admit an appellant to bail pending appeal. It provides thus;
- “(2) The Appellate court may, if it sees fit, admit an appellant to*

bail pending the determination of his or her appeal; but when a Magistrate's court refuses to release a person on bail, that person may apply for bail to the appellate court."

- [7] In the instant case, there is no evidence that when the Applicant was on bail during the trial which lapsed at the time of conviction and during that period, that he did not comply with the terms of bail. He has not claimed any of the exceptional circumstances like advanced age, grave illness or infancy.
- [8] However, as to whether the Applicant or the sureties have a fixed place of abode, apart from merely stating it in the affidavit in support, there is no evidence provided for court's assurance that once the Applicant is granted bail, he will not abscond and if he absconds, he and his sureties will be easily located for satisfaction of bail bond.
- [9] In **para.11** of the affidavit in support, the Applicant stated that he has a fixed place of abode at **Katikara "B" L.CI, Katikara sub county, Kakumiro District** but he attached no evidence to support such a claim. His L.C recommendation letter located him at **Kakiseke L.CI village, Nalweyo Sub County**. Also the L.CI recommendations of the sureties, none indicated that any of the sureties has a fixed or permanent place of abode in the district. The mere statement that "the sureties are resident of the area" is not enough. They could merely be renting or have temporary occupation and therefore, there is a likelihood that they can relocate any time.
- [10] In the above premises, I am not inclined to grant the Applicant bail pending appeal for there are no good reasons to do so. The application accordingly fails. The Applicant's appeal shall be given priority in terms of fixtures for hearing.

Dated at Masindi this 23rd day of June, 2022.

.....

Byaruhanga Jesse Rugyema

JUDGE.