

IN THE HIGH COURT FOR ZAMBIA

HPBA/35/2025

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(CRIMINAL JURISDICTION)

BETWEEN

WATSON BANDA

MAIDREN HOARE

AND

THE PEOPLE



1ST APPLICANT

2ND APPLICANT

RESPONDENT

RULING

Cases referred to:

1. *Anuj Kumar Rathi Krishnan Vs The People* SCZ Judgment No. 19 of 2011
2. *Gracious Kaonde Vs The People* Appeal No. 74 of 2024
3. *Stoddard Vs The Queen* No. 1 N.R.L.R 1954
4. *Faustin Kabwe & Aaron Chungu Vs The People* HPA/21/2011
5. *Collin Roberts Vs The People* CAZ/09/02/2024
6. *Henry Mulenga Kapoko Vs The People* (CAZ/09/90/2020) [2021] ZMCA 240 (21 April 2021)
7. *Titus Zulu, Mike Musanya Sambundu vs The People* (2010) 1 Z.R 450
8. *Oliver John Irwin vs The People* Z.R 1993/1994
9. *The People vs Yousuf Pandor and Bengula Beyani* (2010) 2 Z.R 206

Legislation referred to:

Criminal Procedure Code, Chapter 88 of the Laws of Zambia.

Penal Code, Chapter 87 of the Laws of Zambia

1.0 Introduction

1.1 This is an application for bail pending appeal made pursuant to *Section 332 (1)* of the *Criminal Procedure Code, Chapter 88 of the Laws of Zambia*.

2.0 The applicant's affidavit evidence

- 2.1 In support of this application, the applicants swore and deposed to an affidavit filed on the 27th August, 2025. According to the said affidavit, on the 29th July, 2025 they were convicted of the offence of housebreaking and theft contrary to *Sections 301(a) and 272 of the Penal Code, Chapter 87 of the Laws of Zambia* and were sentenced to fourteen months imprisonment.
- 2.2 That on the 29th July, 2025 they appealed against their conviction. Following the Notice of Intention to Appeal, they applied for bail pending appeal before the trial Magistrate on the 21st August, 2025 who dismissed their application.
- 2.3 The evidence implicating them is circumstantial and did not permit only the inference of guilt and was given by the complainant and his minor sister which required corroboration or something more.
- 2.4 Further the trial Court disregarded their alibi which the arresting officer failed to investigate causing prejudice to them.
- 2.5 In the circumstances, their appeal against conviction has good prospects of succeeding as the Court would see from the more detailed grounds of appeal exhibited in the Notice of Appeal.
- 2.6 The offence of which they were convicted is bailable and if they are not granted bail, it is likely that they will have served the sentence or a substantial portion of it by the time their appeal is heard.

3.0 The applicants' skeleton arguments

- 3.1 In their skeleton arguments of even date, counsel for the applicants made reference to *Section 332 (1) of the Criminal Procedure Code, Chapter 88 of the Laws of Zambia* for the jurisdiction this Court has to entertain this application. Counsel argued that the application for bail has high prospect

of success as evidence in the grounds of appeal contained in the affidavit supporting the application.

- 3.2 Reference was made to the case of **Anuj Kumar Rathi Krishnan Vs The People**¹ where the Court held that:

“It is not for the court to delve into the merits of each ground in the appeal but for the court to examine the grounds and make a conclusion on the likelihood of the appeal succeeding.”

- 3.3 The court was also referred to the case of **Gracious Kaonde Vs The People**² where it was held that:

“Although the court is precluded from considering the merits of the appeal, there are allowed to preview the prospects of success, and that considering the totality of the evidence adduced by the prosecution, the court was of the view that there was a high likelihood of the appeal succeeding.”

- 3.4 It was counsel’s firm submission that the applicants may be prejudiced if bail pending appeal is not granted and the appeal succeeds, as the applicant would have served a substantial portion of the sentence by the time that the appeal is heard and determined, looking at the sentence given to the applicants.

- 3.5 Counsel contended that this application meets the principles which it ought to satisfy to be admitted to bail pending appeal as laid down in the case of **Stoddard Vs The Queen**³ where it was held that:

“A convicted person should not be released on bail pending appeal unless exceptional circumstances are disclosed.”

- 3.6 It was counsel’s considered view that the fact the applicants will have served a substantial portion of their sentence by the time the appeal is heard and determined is an exceptional circumstance.

3.7 On the basis of the foregoing, counsel prayed that this Court grants the bail pending appeal.

4.0 The respondent's affidavit evidence

4.1 In the affidavit in opposition filed on the 10th September, 2025, sworn to by Victor Choongo, State Advocate, the respondent avers that the reasons given by the applicant are not cogent enough for the Court to grant the application sought. This is because no exceptional circumstances have been shown to exist to warrant the convicts herein to be granted bail pending appeal.

4.2 A quick perusal of the grounds of appeal will show that there is no likelihood of success of the appeal. That the applicant are unlikely to have served the whole or substantial portion of the sentence by the time the appeal is heard as appeals no longer take long to be processed.

4.3 The likelihood of the respondent being prejudiced in the effective prosecution of this matter is greater than that of the convicts.

5.0 The respondent's skeleton arguments

5.1 In their skeleton arguments filed on even date, counsel referred to the **Stoddard Vs The Queen** case which emphasizes that a convicted person should not be released on bail pending appeal, unless exceptional circumstances are disclosed. That in the said **Stoddard** case, reference was made to special circumstances and these are where it appears *prima facie* that the appeal is likely to succeed or where there is a risk that the sentence will be served by the time the appeal is heard.

5.2 Counsel went on to argue that the case of **Stoddard** was cited in the case of **Anuj Kumar Rathi Krishan Vs The People** where the appellant in that case was sentenced to 4 years imprisonment. That it was held by the court in the **Anuj Kumar Rathi Krishan** case as follows:

"1. It is settled law that bail is granted at the discretion of the Court.

2. *the Court must be satisfied that there are exceptional circumstances that are disclosed in the application.*
10. *The fact that the appellant, due to delay in determining his appeal may, have served a substantial part of his sentence by the time his appeal is heard, is one such circumstance. Each case is considered on its merits, depending on what may be presented as an exceptional circumstance.*
11. *It is important to bear in mind that in an application for bail pending appeal, the Court is dealing with a convict, and sufficient reasons must therefore exist before such a convict can be released on bail pending appeal.*
12. *The decision in **Stoddard Vs The Queen** is still good law and is quite instructive as to the principles applicable in applications for bail pending appeal.*
13. *It is not for the Court to delve into the merits of the each ground, but it suffices that all the grounds are examined and a conclusion is made that prima facie the prospects of success of the appeal are dim.”*

5.3 It was counsel’s argument that on the strength of the above cited authorities, it is settled law that in order for bail pending appeal to be granted, there ought to be exceptional circumstances present which the Court must consider in exercising its discretion, as the applicants are treated as convicts and not as accused persons.

5.4 That at this point, the convicts’ conviction and sentence was firm and grounded on the law and that the said conviction is good until it is quashed by this Court. It was counsels considered view that Courts are enjoined to proceed with circumspection on the grant of bail to convicted persons, whose applications for admission to bail ought to be evaluated to a higher standard

than trial applicants. For this argument reference was made to the case of **Faustin Kabwe & Aaron Chungu Vs The People**⁴ where it was held that:

“However, it is important to observe that the status of the applicant is that of a convict. As a convict, the applicant does not enjoy the same status as that of a free, or innocent person. A convict does not also enjoy the same status as a person who is facing criminal charges, but he is nonetheless deemed or presumed by the Constitution to be innocent unless and until proved guilty in criminal proceedings. It is for that reason that bail pending appeal ought to be granted with utmost circumspection, and in exceptional circumstances.”

5.5 Counsel argued that guidance was given to the Courts in the case of **Anuj Kumar Rathi Krishan** where the Supreme Court stated that it is not for a Judge to delve into the merits of each ground, but it suffices that all the grounds are examined and a *prima facie* conclusion is made as to the prospects of success. That a perusal of the applicant’s grounds of appeal shows that the prospects of success are dim and the argument that the applicants would have served a substantial part of their sentence on the basis that it was short was of no consequence on the basis of the recent case by the Court of Appeal.

5.6 For the above argument reference was made to the case of **Collin Roberts Vs The People**⁵ where Justice Muchenga held, in his Ruling on an application for bail pending appeal, where a convict was sentenced to 18 months imprisonment, that:

“When considering whether there are exceptional circumstances warranting the granting of bail pending appeal, the most important factor is the likelihood of the appeal succeeding. Even where there is a likelihood of the whole sentence or substantial portion of the sentence being served by the time the whole appeal is heard, bail will not be granted if there is no likelihood of the appeal succeeding.”

5.7 Counsel prayed that this Court deny the applicants' application for bail pending appeal.

6.0 The applicant's affidavit in reply

6.1 The applicants filed an affidavit in reply on the 17th November, 2025 wherein they aver that by the time their application would be heard on the 24th November, 2025 they would already have served 4 months out of the 14 months sentence imposed on them and it is very likely that they will have served the full sentence or a substantial part of it by the time their appeal is heard and determined.

6.2 That the grounds of appeal show that there is real doubt regarding the correctness of the conviction on points of law and there is a real likelihood of their appeal succeeding.

7.0 The applicant's skeleton arguments

7.1 The applicant filed skeleton arguments on even date wherein counsel made reference to the case of **Henry Mulenga Kapoko Vs The People**⁶ where the Court of Appeal stated that:

*"He also relied on the case of **Stoddard v The Queen** for the principle that an appellant can be released on bail pending appeal if there are exceptional circumstances, which are:*

- (i) The likelihood that he will have served the sentence by the time the appeal is heard;*
- (ii) Where an appeal has raised an important or difficult point of law;*
- (iii) Where there is real doubt about the correctness of the conviction on a point of law;*
- (iv) Where the sentence is manifestly contestable on whether or not it is a sentence known to the law;*
- (v) Whether there is a likelihood of success on an appeal.*

7.2 From the foregoing case, Counsel argued that this Court is precluded from delving into the merits of each ground of appeal and that a perusal of the grounds of appeal would show that the applicants are challenging the correctness of their conviction on points of law. That by way of example, as per grounds 2 and 3 there was real doubt as to whether the applicants should have been convicted on the uncorroborated evidence of a child witness and that of a relative without something more. There was also doubt as to whether the applicants should have been convicted on the evidence of the prosecution which was contrary to the charge without the charge having been amended. Counsel submitted that these points of law are not fanciful but are real and support another exceptional circumstance that there is a real likelihood of the appeal succeeding.

7.3 That the applicants were convicted and sentenced to 14 months imprisonment on the 22nd July, 2025 and by the time this application will be heard on the 24th November, 2025, the applicants will have served 4 full months and will be in their fifth month. Further that it is not even known when the appeal will be heard and determined. Counsel argued that while the Court of Appeal in the **Collin Roberts** case held that bail will not be granted if there is no likelihood of success even where there is a likelihood that the whole or a substantial portion of the sentence would have been served, this would only apply to a hopeless appeal with no real likelihood of the appeal succeeding. That as such the **Collin Roberts** case was distinguishable in this respect.

7.4 On the basis of the foregoing arguments, counsel prayed that this Court allow the application and admit the applicants to bail pending appeal.

8.0 The hearing

8.1 At the hearing, counsel for the applicants and for the respondent placed reliance on the documents before Court and more or less reiterated what was in their documents before court.

9.0 The decision of the Court

9.1 I am indebted to counsel for their submissions and arguments which I have taken into consideration. *Section 332 (1) of the Criminal Procedure Code, Chapter 88 of the Laws of Zambia* provides:

“After the entering of an appeal by a person entitled to appeal, the appellate court, or the subordinate court which convicted or sentenced such person, may, for reasons to be recorded by it in writing, order that he be released on bail with or without sureties, or if such person is not released on bail, shall at the request of such person, order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal.”

9.2 It is not in dispute that the applicants are entitled to apply for bail pending appeal, indeed as per *Section 332 (1)* cited above, it is their right to apply for bail. However, the grant of bail pending appeal is treated with much circumspection. This is ably demonstrated in the case of **Titus Zulu, Mike Musanya Sambundu vs The People**⁷ where Justice Matibini stated that:

“Unlike bail pending trial, bail pending appeal is granted with the reserve because the applicant is a convicted person and the conviction is good unless and until the appellate Court quashes the conviction. It is for this reason that different considerations apply in applications for bail pending appeal.”

9.3 Our Courts have held that in determining a bail application there are five considerations to be taken into account, as was outlined in the case of **Oliver John Irwin vs The People**⁸ Justice Bwalya, as he was then, stated in that case as follows:

“In deciding a bail application, five considerations to be taken into account are clearly spelt out in Archibold, 36th ed and amplified in the case of the State v Gopolong Makcenzie and these read as follows:

- (i) *the nature of the accusation against the applicant and the severity of the punishment which may be imposed;*
- (ii) *the nature of the evidence in support of the charge;*
- (iii) *the independence of sureties if bail were to be granted;*
- (iv) *the prejudice to applicant (accused) if he is not admitted to bail;*
- (v) *the prejudice to the State if bail is granted.”*

9.4 The court went on to guide in the **Irwin case**, that the foregoing conditions do not bar an applicant from raising any other special circumstances peculiar to that particular applicant. Special or exceptional circumstance has been aptly described in the cases of **Stoddard** and **Krishnan** referred to above.

9.5 Further the case of **The People vs Yousuf Pandor and Bengula Beyani**⁹ is also instructive as Justice Matibini in that case held:

“The exceptional or unusual circumstance include: where an appeal has raised an important or difficult point of law; where there is real doubt about the correctness of a conviction on a point of law; where a sentence is manifestly contestable as to whether or not it is a sentence known to law; where the appellant is likely to serve the entire or substantial part of the sentence before the appeal is heard and where generally there is likelihood of success.”

8.6 Applying these principles to the facts of this case and upon a perusal of the grounds of appeal, it is apparent that the same raise serious and arguable issues of law as they suggest that the lower court convicted the applicants on the uncorroborated evidence of a child witness and that of witnesses with a possible interest to serve. Further, that the lower court did not take into consideration an alibi and that the applicants were convicted on a different charge to the initial one.

9.7 These issues may affect the soundness of the conviction and in line with the aforementioned authorities, I find that the grounds *prima facie* reveal, a likelihood of success on appeal.

9.8 As such, I am satisfied that they will be able to meet the bail conditions set by this court and grant them bail accordingly. The following are the bail conditions:

- (i) The applicants to pay K10,000.00 each in their own recognizance.
- (ii) The applicants to produce two working sureties working in the public service and of a fixed abode within Lusaka to be bond in the sum of K5,000.00 each.
- (iii) Each applicant to surrender their passports to the Senior Clerk of Court.
- (iv) Each applicant to report to the Senior Clerk of Court every last Friday of the month until the hearing of the appeal is concluded.

Dated the.....^{12th} day of ^{January}.....2026



Ruth Chibbabbuka
HIGH COURT JUDGE