THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL DIVISION

MISCELLANEOUS APPLICATION NO. 0230 OF 2026

(ARISING FROM CRIMINAL APPEAL NO. 0084 OF 2026)

(ARISING FROM CRIMINAL CASE NO. 410 OF 2021)

OKOTH STEPHEN :: APPLICANT

VERSUS

UGANDA :: RESPONDENT

BEFORE: HON. JUSTICE GADENYA PAUL WOLIMBWA

RULING

1.0 Representation and court staff

Mr. Kayima Jonathan Mugoya appeared for the applicant, and Ms Happiness Ainebyona, Chief State Attorney, appeared for the respondent. Mr. Samuel Twakyire served as Registrar, and Mr. Najjib Kagwa as Court Clerk.

2.0 Introduction

The applicant, Okoth Stephen, was indicted alongside others before the Chief Magistrate's Court at Nakawa on charges arising from a fraudulent land transaction valued at UGX 400,000,000. His co-accused were charged with obtaining money by false pretenses, forgery, and uttering false documents, while the applicant alone was charged with conspiracy to commit a felony, for which he was convicted and sentenced to six years' imprisonment. Aggrieved by the conviction and sentence, he lodged a notice of appeal to this Court, registered as Criminal Appeal No. 0084 of 2026, and now applies for bail pending the determination of that appeal

under Article 23(6) of the Constitution of the Republic of Uganda, 1995, and under section 14 of the Trial on Indictments Act.

3.0 The Applicant's Case

Counsel for the applicant submitted that bail pending appeal is a constitutional entitlement under Article 23(6), albeit not automatic. He contended that the applicant has an arguable appeal, citing defects in the charge sheet, procedural irregularities at trial, and an insufficient evidentiary basis to sustain the conspiracy charge. He further submitted that exceptional circumstances exist, relying on Arvind Patel v. Uganda, Supreme Court Criminal Application No. 1 of 2003, and, in particular, on the applicant's prolonged remand and the prospects of success on appeal. Counsel maintained that the applicant has a permanent resident with a fixed place of abode at Mutungo and strong family ties that diminish any risk of flight. He further submitted that his sureties, though elderly, are persons of substance and responsibility capable of ensuring his compliance with bail conditions.

4.0 The Respondent's Case

Counsel for the respondent opposed the application. She submitted that the applicant has failed to demonstrate an arguable appeal, as the conviction for conspiracy was founded on overwhelming evidence of his role as broker and architect of the fraudulent transaction. She added that neither the applicant nor his proposed sureties have established fixed places of abode, and that, given the gravity of the offence and the severity of the six-year custodial sentence imposed, the applicant has every incentive to abscond if released on bail.

On a further point, Counsel observed that the sum of over four hundred million shillings stolen in the course of the offence remains unrecovered, and that the applicant, having been convicted, no longer enjoys the presumption of innocence that attended him at trial. She contended that the burden lies on the applicant to demonstrate, not merely to assert, that his appeal has a reasonable prospect of success, and that he had not discharged that burden. On the question of delay, she submitted that no impediment exists to the expeditious hearing of the appeal, as the record has been settled and the memorandum of appeal and submissions have already been filed, so the appeal is ripe for hearing without further loss of time. She argued that to release the applicant on bail in these circumstances would invite him to frustrate the very appeal he seeks to pursue, to the prejudice of the complainants and of the respondent alike. She maintained, in addition, that the applicant had failed to furnish substantial sureties or to

establish, by credible evidence, a fixed place of abode within the jurisdiction of this court, and that the prevalence of this category of offence, together with the magnitude of the loss occasioned by it, weighed heavily against the grant of bail. In the absence of any exceptional circumstance capable of warranting the applicant's release, and in the interests of justice in having the appeal heard on its merits without delay, counsel urged the court to dismiss the application.

5.0 Legal Framework

Article 23(6) of the Constitution guarantees an accused person the right to apply for bail, but the grant of bail pending appeal to a person already convicted and sentenced by a competent court is not a matter of course. Section 14 of the Trial on Indictments Act empowers this Court to admit a convicted person to bail pending the determination of an appeal. The applicable principles are well settled. Bail pending appeal will be granted only where the applicant demonstrates exceptional circumstances, such as a high likelihood of success on appeal, substantial delay in the hearing of the appeal, or grave hardship (*Arvind Patel v. Uganda, Supreme Court Criminal Application No. 1 of 2003*). Proof of a fixed place of abode is essential to the grant of bail, and the seriousness of the offence and the severity of the sentence are weighty considerations militating against release (*Uganda v. Col. (Rtd) Dr. Kizza Besigye, High Court Miscellaneous Application No. 228 of 2005*). Bail pending appeal will be refused where the risk of absconding outweighs the applicant's entitlement to apply for bail (*Okello v. Uganda, Criminal Appeal No. 12 of 2004*), and the mere existence of a pending appeal is not, on its own, an exceptional circumstance warranting release (*Kyambadde v. Uganda, Court of Appeal Criminal Application No. 90 of 2009*).

These principles have been reaffirmed in more recent Supreme Court jurisprudence. In *Magino v. Uganda, Criminal Application No. 1 of 2024, [2024] UGSC 36*, the Court restated the Arvind Patel considerations — including the applicant's character, whether the offence involved violence, the prospects of success of the appeal, and the likelihood of delay — as the governing framework for bail pending appeal. It emphasised that an applicant bears the burden of adducing credible evidence on each relevant factor, rather than relying on bare assertion. In *Marere v. Uganda, Supreme Court Criminal Application No. 1 of 2023, [2023] UGSC 13*, the Court held that substantial delay in the disposal of an appeal may constitute an exceptional circumstance, but cautioned that such delay must be demonstrated on the record as an actual

and factual occurrence, not merely speculated upon or projected by the applicant. Further, in ***John Muhanguzi Kashaka v. Uganda, Supreme Court Miscellaneous Application No. 18 of 2023***, the Court held that personal mitigating factors favourable to an applicant — such as advanced age, status as a first-time offender, or responsibility as a sole breadwinner, recede in significance when weighed against the gravity of the offence of which the applicant stands convicted, particularly where that offence is grave in nature. These authorities confirm that the threshold for bail pending appeal remains stringent, and that generalised assertions of hardship, delay, or good character do not, without more, discharge an applicant's burden.

A 'fixed place of abode' is an identifiable, permanent residence within the Court's jurisdiction where the applicant can readily be located, traced, and produced for trial or the further conduct of an appeal (*Abindi & Another v. Uganda, Miscellaneous Criminal Application No. 20 of 2016*). It is not synonymous with mere physical presence or a transient address, but connotes permanence, verifiability, and continuity: the residence must be one the applicant occupies on a settled, ongoing basis and be capable of independent corroboration — typically through documentary proof such as a letter of introduction from the Local Council authority of the area, a land title, a tenancy agreement, a utility bill, or a sworn affidavit from a neighbour or local leader attesting to the applicant's known and continuous residence there. In ***Mugyenyi Steven v. Uganda, Miscellaneous Application No. 65 of 2004***, it was held that the onus lies on the applicant to satisfy the court that he has a permanent place of abode in a particular known village, sub-county, county, and district, so that the court can trace him while on bail. That approach was applied in ***Kanyamunyu v. Uganda, High Court Miscellaneous Criminal Application No. 0177 of 2017***, where it was further clarified that an applicant need not own the residence in question — a tenancy will suffice — provided the address is specific, verifiable, and keeps the applicant traceable within the court's jurisdiction. Section 15(4) of the Trial on Indictments Act identifies proof of a fixed place of abode within the jurisdiction, or the absence of ordinary residence outside Uganda, as a relevant factor in assessing the risk of absconding, a position restated in Guideline 13(k) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022. The same principle finds expression in comparative Commonwealth jurisprudence: The High Court of Kenya, in *Republic v. Hashim, Criminal Case No. E082 of 2024, [2025] KEHC 11301*, held that the fear of an accused being a flight risk is mitigated by the existence of a known fixed abode together with established strong social ties at the family and community levels, and refused bail where the accused had no settled residence and could not be traced. Where an applicant fails to establish such abode, the Court is left without any reliable means of securing his attendance, and bail has, on that

ground alone, been refused. The burden of proving a fixed place of abode lies squarely on the applicant, and bare assertion, unsupported by verifiable particulars, does not discharge it.

6.0: Consideration of the Application

I have considered the submissions of both counsel, the affidavit evidence on the record, and the authorities cited.

6.1: Gravity of the Offence

The offence of which the applicant stands convicted, conspiracy to commit a felony in relation to a fraudulent land transaction worth UGX 400,000,000, is grave both in its nature and in its financial magnitude. Consistent with the holding in ***Uganda v. Col. (Rtd) Dr Kizza Besigye*** and the approach taken more recently in John Muhanguzi Kashaka v. Uganda, the seriousness of the offence and the severity of the resulting six-year sentence weigh heavily against granting bail. Any mitigating personal circumstances advanced on the applicant's behalf must be assessed against that backdrop.

6.2: Fixed Place of Abode

Regarding a fixed place of abode, the applicant has not placed before the Court credible evidence establishing such an abode at Mutungo or elsewhere. His proposed sureties, though described as responsible persons, have likewise failed to establish fixed places of residence. The absence of a verifiable abode on the part of both the applicant and his sureties is, in light of *Col. (Rtd) Dr Kizza Besigye*, a significant impediment to the grant of bail, as it deprives the Court of any reliable assurance that the applicant will be produced for the further conduct of his appeal.

6.3: Flight Risk

Regarding flight risk, the gravity of the offence and the length of the custodial sentence already imposed provide the applicant with a strong incentive to abscond rather than surrender to a substantial term of imprisonment. Applying the principles in Okello v. Uganda, I find that this risk is not adequately offset by the assurances provided by the applicant's counsel.

6.4: Prospects of the Appeal

The applicant's notice of appeal raises two distinct grounds, which must be assessed separately: first, that the trial court erred in evaluating the evidence underlying the conviction for conspiracy; and second, that the sentence of six years' imprisonment, being close to the

maximum permissible for the offence, was manifestly excessive in the case of a first offender. These matters are properly reserved for determination by the appellate court seized of Criminal Appeal No. 0084 of 2026, and I am mindful not to pre-empt that determination. On the first ground, the applicant has not demonstrated the high likelihood of success contemplated in *Arvind Patel v. Uganda*, nor, as required by *Magino v. Uganda*, has he adduced credible evidentiary particulars in support of that contention, as opposed to bare assertion. I further note that no plea of substantial or undue delay in the hearing of the appeal has been raised, and even had it been, *Marere v. Uganda* requires that such delay be established as an actual and factual matter on the record, not merely anticipated. Accordingly, neither limb avails the applicant as constituting an exceptional circumstance on the evidentiary ground.

6.5: Appeal against Sentence

The second ground stands on a different footing. The applicant is a first offender, with no antecedent criminal record placed before the trial court or this Court. He was charged and convicted solely of conspiracy, while the substantive offences of obtaining money by false pretenses, forgery, and uttering false documents were laid against his co-accused alone. The sentence of six years' imprisonment, close to the statutory maximum for that offence, is the kind of sentence ordinarily reserved for the most aggravated instances of conspiracy, including repeat offenders or those who personally committed the underlying felony. On the face of the record, there must accordingly be a real question, properly arguable before the appellate court, as to whether the trial court gave adequate weight to the applicant's previous good character and to parity with his co-accused when arriving at a sentence of that severity. I am satisfied that this ground, unlike the first, discloses an arguable basis on which the appellate court may find the sentence manifestly excessive and order a reduction.

That prospect, however, does not advance the applicant's case for bail pending appeal. A ground confined to sentence, even if arguable, attacks only the quantum of punishment and leaves the conviction for conspiracy undisturbed. The most the applicant could obtain on this ground is a reduction of his term of imprisonment, not his liberty; he would, on any view, remain in lawful custody serving whatever sentence the appellate court considered appropriate. Bail pending appeal exists to guard against the injustice of an applicant serving a custodial sentence that an appeal may ultimately show he ought never to have served at all; that rationale has no purchase where, as here, a successful appeal would still leave the applicant subject to a custodial term. The arguability of the appeal against sentence is accordingly a matter properly for the appellate court's consideration in due course, but it does not, by itself or in combination

with the matters considered above, establish the exceptional circumstance required for release on bail in the interim.

6.6: Evaluation of Evidence on the Charge of Conspiracy

On the specific charge of conspiracy, the applicant contends that the evidence falls short of establishing the requisite meeting of the minds with his co-accused. The offence of conspiracy to commit a felony does not require proof that the applicant personally committed the substantive acts of forgery, uttering, or obtaining by false pretences with which his co-accused, but not the applicant, were charged; it requires only proof of an agreement, express or tacit, to commit the felony, coupled with an act or acts in furtherance of that agreement. A conspirator may accordingly be convicted even where the felony itself is not brought home to him personally. Without seeking to pre-empt the appellate court's own assessment of this ground, I observe that the record discloses the applicant's role as the broker who initiated and drove the impugned land transaction; that he actively participated in the negotiations between the parties; that he facilitated the payments later found to have been procured through forged and false documents; and that he personally signed the agreement of sale through which those payments were channelled. That degree of central, sustained involvement is capable of sustaining an inference of common design and active furtherance of it, and the applicant has not, at this stage, identified any specific evidentiary gap or misdirection capable of disturbing that finding. For present purposes, and on the material before me, I am not satisfied that the applicant has demonstrated the high likelihood of success required to found an exceptional circumstance on this ground. However, the point remains one for full ventilation on appeal.

6.7: Whether Exceptional Grounds Exist for Release on Bail

Drawing together the findings above, I am satisfied that the applicant has not established the exceptional circumstances required by Arvind Patel v. Uganda and the authorities that follow it as a condition for the grant of bail pending appeal. He has demonstrated neither a high likelihood of success on the ground attacking his conviction, nor any substantial delay in the hearing of his appeal capable of constituting such a circumstance. While the ground challenging the severity of his sentence is properly arguable, it does not, for the reasons already given, establish an exceptional circumstance, since its success would leave him subject to a reduced but continuing custodial term rather than securing his liberty. He has further failed to discharge the burden, placed on him by Mugyenyi Steven, of establishing a fixed place of abode for himself or his sureties, and the gravity of the offence, together with the severity of the

sentence already imposed, leave him with a marked incentive to abscond. None of these matters, whether taken singly or cumulatively, rises to the threshold of an exceptional circumstance contemplated by Article 23(6) of the Constitution and section 14 of the Trial on Indictments Act. I therefore find that the applicant does not have exceptional grounds entitling him to release on bail pending the determination of his appeal.

6.8 Cumulative Assessment

Taken cumulatively, the absence of a verified fixed place of abode for the applicant and his sureties, the heightened risk of flight arising from the gravity of the offence and the severity of the sentence, and the absence of any demonstrably strong ground touching the conviction itself weigh heavily against releasing the applicant on bail. Although I have found that there might be some merit in the ground of appeal against sentence, for the reasons given above, even if it ultimately succeeds, it would result only in a reduced custodial term, not in the applicant's acquittal or release; it accordingly cannot establish the exceptional circumstance required for bail pending appeal.

7.0 Decision

In conclusion, the applicant has failed to discharge the burden of establishing exceptional circumstances that would warrant his release on bail pending appeal. Accordingly, the application for bail pending appeal is refused.

The applicant is advised to take all necessary steps to expedite the hearing of Criminal Appeal No. 0084 of 2026. I further direct that Criminal Appeal No. 0084 of 2026 be fixed for hearing and heard within two months of the date of this ruling, to ensure that the refusal of bail does not unduly prejudice the applicant's entitlement to a timely determination of his appeal.

It is so ordered.

Gadenya Paul Wolimbwa

JUDGE

30th June, 2026