CR. APP. 3/2025

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

ABDUL RAHMAN JALLOH - APPELLANT/APPLICANT

AND

THE STATE - RESPONDENT/RESPONDENT

CORAM:

HON. JUSTICE SULAIMAN AHMAD BAH JA. (PRESIDING)

HON. JUSTICE AIAH S ALLIEU JA.

HON. JUSTICE AUGUSTINE K MUSA J.

COUNSEL:

E. LASSAYO AND A S SESAY FOR THE APPELLANT/APPLICANT

A J M BOCKARIE, PRINCIPAL STATE COUNSEL FOR THE RESPONDENT/RESPONDENT

RULING DELIVERED ON THE 10th DAY OF DECEMBER 2025.

The Application

1. On the 28th day July 2025, Abdul Rahman Jalloh, the appellant/applicant, (herein after referred to as 'the appellant') was convicted by the High Court of Sierra Leone in Kenema for the offence of Murder and sentenced to life imprisonment.

2. On the 7th day of October, 2025, Counsel for the appellant filed a Notice of Motion to this Court praying for the appellant to be granted bail pending the hearing and determination of his appeal.

3. In support of the application are the affidavit in support, a supplemental affidavit and an affidavit in reply deposed to on, the 7th day of October 2025, the 24th day of October 2025 and the 3rd day of November 2025, respectively. These affidavits in summary state amongst other things, the following:
That the appellant was indicted for murder on the 14th September 2024, convicted and sentenced by the High Court in Kenema on the 28th day of July 2025; that between the 31st day of January 2025and the28th day of July 2025, (the date of his conviction and sentence,) the appellant was released on bail 'and attended every court hearing without fail'; that 'given his record of compliance with his previous bail terms, his profound family and community ties, and the commitment of substantial sureties, he poses no flight risk as his sole intention is to remain and pursue his appeal and prove his innocence'; that the appellant is not a danger to the safety and security of the public; that a notice of appeal was filed on behalf of the appellant on the 22nd day of August 2025 containing six (6) grounds of appeal; and, that the said grounds 'are substantial and raise serious legal questions that demonstrate a strong likelihood of success'.

The Submissions

4. In his submissions Counsel for the appellant relied on the entirety of the affidavits filed together with the exhibits attached thereto. He referred to section 67(2) of the Courts Act 1965 Act No 31 of 1965(hereinafter referred to as 'the Courts Act') and Rule 53(1) of the Court of Appeal Rules 1985 Statutory Instrument 29 of 1985 (hereinafter referred to as 'the CAR') and submitted that the cited provisions gives the Court an unfettered discretion to admit the appellant to bail pending the hearing and determination of the appeal. In support of his submission, Counsel relied on *Cr. App 4/13 Mustapha Amara vs The State* (herein after referred to as ***'the Mustapha Amara case'***) and *Misc App 2/2001 Hon Justice M O Taju Deen vs The State* (herein after referred to as ***'the Taju Deen case'***) and submitted that a common factor among the cases, is that, proof of good grounds of appeal would suffice as that was the basis for the granting of bail. Further, Counsel submitted that the appellant grounds of appeal are good and strong grounds. In support, Counsel continued to submit: that the Learned Trial Judge (hereinafter referred to as 'LTJ') did not properly address the jury on the effect of inconsistent statements; that the LTJ did not direct the jury on the effect of the evidence of an accomplice: and, that the LTJ failed to properly direct the jury on the evidence of the appellant's defence of *alibi*.
In addition to the good grounds of appeal, Counsel also submitted that the appellant should be granted bail on the basis of him being a family man, operating a good business and with strong connections to the community.

5. In response, AJM Bockarie for the State/respondent commenced by relying on an affidavit in opposition, he deposed to on the 7th day of October 2025. He submitted that the tests to be considered by the Court in granting bail pending appeal are set out in the

case of *Cr App 2/2015 Ishaka Sylvester Menjor vs The State* (hereinafter referred to as ***'the Ishaka Sylvester Menjor case'***).
On the first test: 'Does it appear *prima facie* that the grounds of appeal will succeed?' Counsel submitted that the grounds in the notice of appeal are arguable but whether they will succeed, that is yet to be determined. Further, he submitted that ***the Mustapha Amara case*** is easily distinguishable from this application, that in addition to the court holding that the grounds of appeal are *prima facie* good and strong grounds, the appellant had paid the fine imposed on him.

On the second test: 'Is there a risk that the term will be served by the time the appeal is heard and determined?' Counsel submitted that the appellant was sentenced to life imprisonment; and, that it is unlikely he would have served a substantial portion of the sentence before his appeal is determined. Counsel referred to section 2(2) of the Abolition of Death Penalty Act 2022, Act No 6 of 2022 (hereinafter referred to as ***"the Abolition of the Death Penalty Act"***), which state that life imprisonment means a minimum of thirty (30) years.

Further, Counsel submitted that the discretion in granting bail to a convict is different from the discretion exercised in granting bail to the defendant at the trial. Finally, Counsel did submit that the appellant had failed to satisfy the two tests in the **Ishaka Sylvester Menjoh** case and therefore bail should not be granted

6. In reply, Counsel for the appellant relied on the affidavit in reply in its entirety and submitted that the appellant's grounds being good and strong is sufficient for bail to be granted.

Bail Pending Appeal

7. In support of the application for bail pending the determination of appeal, Counsel for the appellant relied on rule 53(7) of the CAR and section 67(2) of the Courts Act. It is not unseemly for an appellant to rely on both provisions in an application for bail pending an appeal; but, the correctness of such reliance would depend on when the application is made.

Rule 53(7) of CAR

8. Rule 53(7) of CAR states:

> *"**Where an appellant is present before the Court**, the Court may, on an application made by any person or, if it thinks fit, without any application, make any order admitting the appellant to bail ..."* **(Emphasis added)**.

This rule confers on the Court the discretion of granting bail to an appellant where the appellant is present before it or when the Court is seised of the appeal. In this application, the appellant exhibited a notice of appeal filed on the 22nd day of August 2025, against his conviction by the High Court for murder on the 28th day of July 2025.

There is neither a constituted panel of this Court to hear and determine the appeal, nor is there any evidence of the records of the appeal being settled. As a result, relying on this rule at this stage, as Counsel had done, is unhelpful.

Section 67(2) of the Courts Act

9. The appropriate provision to be invoked in situations like this, as Counsel did, undoubtedly, is section 67(2) of the Courts Act, which states:

> *"[t]he Court of Appeal or the Court before whom he was convicted may, **if it seems fit,** on the application of the appellant, may admit the appellant to bail pending the determination of his appeal.* **(Emphasis added).**

10. Counsel for the respondent is in agreement that Section 67(2) of the Courts Act rules the regime relating to bail pending the determination of appeal. Whilst both Counsel do not disagree on the Court's unfettered and wide discretion; yet, they are at variance as to how the discretion is or should be applied.

The Law

11. In *Misc App 15/2001 Hon Mr Justice M O Taju Deen vs The State* (hereinafter "***the Taju Deen case***"), this Court in exercising its discretion in the granting of bail pending appeal, adopted with approval the tests laid in the decision of the West African Court of Appeal in *R v Theophilus Adenuga Tunwashe and Others* [1935] WACA 236**:**

> *"(1) That bail will not be granted pending appeal save in exceptional circumstances or where the hearing is likely to be unduly delayed.*
> *(2) In dealing with the later class of cases the court will have regard not only to the length of time which must elapse before the appeal can be heard but also the length of the sentence to be appealed from, and further that these two matters will be considered in relation to one another."*

12. The Court has since been consistent in the approach of exercising its discretion or determining what constitute '***if it seems fit***' in section 67(2) of the Courts Act, in granting bail pending appeal. In *Cr. App 1/2012 Ibrahim Bah vs The State* (herein after referred to as the '***the Ibrahim Bah Case***') the Court stated:

> "[t]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 the sentence before his appeal has been heard [and determined]."*

13. Also, in ***the Ishaka Syvester Menjor case***, this Court not only did cite and adopt the tests adopted and applied in ***the Taju Deen case;*** but, succinctly articulated same and laid a framework of how the Court is to be persuaded in granting bail pending appeal as follows:

> *'When considering an application for bail the following test set out in WATTON vs R is the crucial litmus test 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 these questions are answered in the affirmative that the court will be persuaded to 'seem it fit' to grant bail pending the appeal."(per R S Fynn JA)

14. It is noted that 'exceptional circumstances' include 'the strength of the grounds of appeal'. Whilst this Court is conscious of the fact that it is bound by the aforementioned decisions, it is sensible to hold that the discretion granted to this Court by the phrase '***if it seems fit'*** in section 67(2) of the Courts Act, cannot be circumscribed or restricted. To that end, it would be prudent for the Court in exercising its discretion or considering what constitute "***if it seems fit***", to exhibit or show a good sense or judgment.

Grounds of Appeal

15. Counsel for the appellant referred to exhibit D1-4 – the notice of appeal dated the 22nd August 2025, containing six (6) grounds as stated:

". *GROUNDS OF APPEAL*
i. The Leaned Trial Judge erred in law by failing to adequately direct the jury on the effect of inconsistent statement and material contradictions in the testimonies of the Prosecution Witnesses, thereby occasioning a miscarriage of justice.

PARTICULARS OF ERROR ON GROUND 1
....

GROUND 2
ii. The Leaned Trial Judge erred in law by failing to properly direct the jury on the approach of the evidence of PW2.

PARTICULARS OF ERROR ON GROUND 2
....
GROUND 3
iii. The Leaned Trial Judge erred in law by failing to direct the jury on the critical fact that PW2 had been charged as a co-accused with the appellant, a matter going directly to the witness's credibility and the weight to be attached to her testimony.

PARTICULARS OF ERROR ON GROUND 3
....

GROUND 4

iv. The Leaned Trial Judge failed to adequately analyse and explain to the jury the nature and evidential significance of the alibi defence, including the requisite burden and standard of proof.

PARTICULARS OF ERROR ON GROUND 4

....

GROUND 5

v. The Leaned Trial Judge erred in law by failing to direct the jury on the probative value of material omissions in the evidence of the prosecution witnesses.

GROUND 6

vi. The Leaned Trial Judge erred in law and usurped the function of the jury by introducing contested facts into the summing up, thereby prejudicing the fairness of the trial."

Deliberations

16. Counsel submitted that the aforementioned grounds of appeal are good and strong grounds and that they will succeed on appeal. Looking at the grounds particularly 1 to 4, though inelegantly drafted, it is but fair to hold that they are apparently discernible and arguable. However, it is recommended that whenever Counsel is engaged in drafting and filing grounds of appeal, heed must be given to the provisions of section 57(1) of the Courts Act 1965, as amended.

17. Furthermore, Counsel did submit that by establishing that the grounds being *prima facie* good grounds, are in themselves sufficient for this Court to consider granting the appellant bail pending his appeal. In support Counsel relied on ***the Taju Deen and Mustapha Amara cases.***

18. It should be stated at the outset that this Court in multitude of cases including the ***Taju Deenc case*** (cited and relied on by Counsel), the ***Ibrahim Bah case, the Mustapha Amara case (***also cited and relied on by Counsel) and the ***Ishaka Sylvester Menjor case,*** to mention but a few, has held that in granting an appellant bail pending appeal, the Court should consider '*the strength of grounds of the appeal*' in addition to '*the likelihood that the appellant would have served a substantial part of his sentence before the appeal has been heard'*. Additionally, ***the Mustapha Amara case***, quoted *verbatim* (at paragraph 9 thereof) ~~the~~ re-stating the tests considered in granting bail pending appeal in ***the Ibrahim Bah Case,*** as appearing in *paragraph 15 supra.*

19. Moreover, in the ***Mustapha Amara case,*** the Court granted the appellant bail on the basis that: the grounds of appeal are *prima facie* strong grounds, in conjunction with the fact that the sentence had been complied with in part or was partly satisfied – that

is, the payment of the Le60 million fine imposed, in addition to the 5 years of imprisonment. Therefore, the submission made by Counsel that ***the Taju Deen and Mustapha Amara cases*** provide support that bail pending appeal may be granted on the strength of the grounds of appeal alone, is unfitting, misleading and untenable.

20. The Court notes that Counsel for the appellant did not address '*the likelihood that the appellant would have served a substantial part of his sentence before the appeal has been heard'*. The failure to argue same clearly undermines compliance with the suggested framework for persuading this Court in granting bail pending appeal.

21. The appellant is convicted for Murder and is serving a life imprisonment sentence. Section 2(2) of The Abolition of the Death Penalty Act defines life imprisonment to mean an imprisonment for not less than thirty (30) years. Therefore, a life imprisonment sentence is discernible from a sentence for a term of years, for example: one year of imprisonment on a conviction for Corrupt Acquisition of Wealth or, five years of imprisonment on a conviction for Receiving Stolen Goods or, five years of imprisonment on a conviction for Dishonest Appropriation of Donor Funds, as was in the ***Taju Deen case,*** the ***Ibrahim Bah case*** and ***Mustapha Amara case,*** respectively.

22. In considering bail pending appeal for an appellant serving a life imprisonment sentence, the Court should consider *inter alia:* the length of the sentence which is 'at least thirty (30) years imprisonment'; the serious or grave nature of the offence for which the life sentence is imposed; and, the highly unlikely risk that the appellant would have served a greater part of the sentence before the determination of his appeal.

23. Counsel in canvassing the Court for bail to be granted to the appellant pending his appeal, did submit that the Court should consider: the appellant's record of compliance with his bail terms during the trial, his profound family and community ties, the commitment of sureties, and the fact that he poses no flight risk and not being a danger to the safety and security of the public. With the appellant having being convicted and serving a sentence of imprisonment for life, the circumstances as canvassed, are of no moment, for they are most germane for bail application during trial, where the appellant (then defendant) was presumed innocent until proven guilty.

Conclusion

24. Having noted that the grounds of appeal are apparently good and arguable, that alone, cannot persuade this Court to grant bail, considering the length of the sentence which is at least thirty (30) years for Murder, a highly unlikely fact that the appellant would have served a 'substantial' part of his sentence before his appeal is determined.

25. In the circumstance therefore:

(i) the appellant's application for bail pending his appeal is hereby refused;

(ii) the records of appeal be settled by the Registry of the Court of Appeal no later than the 30th day of January 2026; and,

(iii) that the Registry of the Court of Appeal must forward the settled records of appeal to the Hon Chief Justice no later than the 6th day of February 2026.

HON. JUSTICE SULAIMAN AHMAD BAH JA.

..... **I agree.**

HON. JUSTICE AIAH S ALLIEU JA.

18/12/2025

..... **I agree.**

I HON. JUSTICE AUGUSTINE K MUSA J.