



registration in question. He is alleged to have disposed of the registered property by sale but this is not directly in point in this application.

Learned Counsel for the applicant Mr. Kwizera attacked the judgment of the trial Court, and submitted that the appeal is likely to succeed, and hence, he furnished the application should be granted. Counsel for the respondent, Mr. Odit countered that there was evidence to support the convictions centred on the fact that the applicant made the declaration concerning the title, to the effect that it was lost, well knowing that it was in the custody of Kamadi Matovu, one of the beneficiaries of the estate in question.

Much as likelihood of success of the appeal is a very relevant factor for considering whether or not the application should be granted, this court is not sitting in appeal. It would appear the reasoning represented by principles Masrani Case (**MASRANI Vs. R [1960] EA 320**) to the effect that bail pending appeal is exceptional, has been superseded by the principles apparent in the Supreme Court of **ARVIRD PATEL VS. UGANDA Criminal Application No. 1 of 2003** – decided by the Supreme Court of Uganda Oder JSC (of loving memory). The principles and factors enunciated by the Supreme Court were followed and applied by this Court in **Esther Kagwa Vs. Uganda Miscellaneous Criminal Application No. 158 of 2006 (before C.A. Okello J.)** and I hereby adopt them as follows:- taken into account are:

- (1) Character of the applicant,
- (2) Whether or not the applicant is a first offender
- (3) Whether the offence entailed or had an element or elements of personal violence.
- (4) Does the appeal has a reasonable possibility of success, and is not frivolous.
- (5) Possibility of substantial delay in the determination of the appeal, and finally.
- (6) Antecedents of the applicant after the conviction and during the pending of the appeal, if any.

The applicant is a first offender and whereas the allegation of false swearing places the contravention in the category of offences entailing moral turpitude, thus making it serious, these were no violence against the person in the dispute. The term imposed as two years which would expire at the end of 2009 if the whole term of imprisonment were to be served. However, for good behaviour a prisoner gets remission of 1/3 of the sentence. There is no evidence that the

applicant's conduct in prison is bad. If he earned 1/3 remission his sentence would expire not later than June, 2009. The appeal has not been fixed yet for hearing. In the event of success he would have his name cleared, and the record rectified, but if the appeal were to be heard and determined after serving the sentence that is hardly justice in the real sense of the word. Because of the delay in hearing the appeal I am persuaded to grant the application. Needless to emphasize not all the factors, above considered, need be present for the applicant to succeed in receiving release on bail pending appeal. The sworn witnesses are relatives to the applicant and in case he dishonoured his bail conditions the police would easily trace. The subject matter of the charges is property in which all the beneficiaries of the deceased's estate, including the applicant, are interested. In all probability there is no temptation for the applicant to abscond. The application is granted. Applicant may be released on executing a recognisance of 25,000,000/= not cash, with two sureties each, entering a similar bond not cash, and appear on 7-11-2008 before the Registrar (Crime) for mention, with a view to fixing a date for hearing the appeal.

**J.P.M Tabaro**

**Judge**

**10-10-2008**