



**IN THE SUPREME COURT OF APPEAL SITTING AT BLANTYRE**

**MSCA Criminal Appeal No. 1 of 2020**

(Being High Court of Malawi, Lilongwe District Registry, Criminal Case  
No. 125 of 2015)

**Between:**

**Cornelius Kaphamtengo..... 1<sup>st</sup> Appellant/Applicant**

**Conrad Nambala.....2<sup>nd</sup> Appellant/Applicant**

**Chikondi Chimutu.....3<sup>rd</sup> Appellant/Applicant**

**And**

**The Republic.....Respondent**

**Coram:Honourable Justice A.C. Chipeta SC, JA**

Maele, of Counsel for the Appellant/Applicant

V. Chirwa, of Counsel for the Respondent

Masiyano, Court Clerk

**RULING**

Cornelius Kaphamtengo and his two co-applicants have taken out an *inter-partes* summons for bail pending the determination of their appeal in this Court. They have founded it on Section 24 of the Supreme Court of Appeal Act (Cap 3:01) of the Laws of Malawi. This application being a

matter that does not involve either the hearing or the determination of an appeal, it came to me as Motion Judge by virtue of Section 7 as read with its proviso(a) of the Supreme Court of Appeal Act. The applicants, through the affidavit they have filed in support and the exhibits it carries, indicate that they are currently serving various terms of concurrent imprisonment, the longest of which sentences are 5 years long. They were, along with several others, on 10<sup>th</sup> January, 2019 convicted by the High Court of Malawi sitting at Lilongwe for the offences of conspiracy to defraud, theft, and money laundering.

Disgruntled with both their convictions and sentences, the applicants readily appealed to this Court against the same. They soon thereafter applied to the High Court for a stay of execution of their sentences and for admission to bail pending appeal. The High Court delivered its ruling on that application on 24<sup>th</sup> July, 2020 and denied them bail. It is following that determination that, through this summons, the applicants want to try their luck afresh in this Court. They have basically entitled their summons as one on an '*..application for admission to bail pending the determination of appeal.*'

However, as a matter of fact this is, strictly speaking, not an application that is pending the determination of the appeal it relates to. There is no evidence to suggest or to show that a record of appeal has been prepared and/or filed in this Court by the Registrar of the Court below in terms of Order IV rule 8 of the Supreme Court of Appeal Rules, which means that the material appeal is not yet in a position to be heard and has therefore not been heard. It is, therefore, far from being pending a determination except in a very remote sense. It would thus have been more precise to describe this application as one for bail pending the hearing of the appeal. In any event, if it was supposed to come to this Court by virtue of Order I rule 18 of the Supreme court of Appeal Rules then it was not supposed to be other than a repeat of the application