

CHRISTPHER DLODLO

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE

MAKONESE J

BULAWAYO 14 AND 21 JULY 2022

Bail Pending Appeal

G. Sengweni, for the applicant

Ms N. Ngwenya, for the respondent

MAKONESE J: This is an application for bail pending appeal. The application is opposed.

The applicant appeared before a Bulawayo Magistrate on the 13th of June 2020 facing allegations of bribery in contravention of section 170 (1) (b) of the Criminal Law Codification and Reform Act (Chapter 9:23). He was convicted and sentenced to 30 months imprisonment with 3 months suspended for 5 years on the usual condition of good behaviour.

Factual Background

The brief facts of the matter are that on the 11th of June 2022 and at around 1630 hours the complainant was at a traffic enforcement roadblock at the corner of Cecil Avenue and Harare road, Bulawayo. The accused person was driving a Toyota Rejius motor vehicle,

registration number ACW 2468. He was stopped at the road block and ordered to pull over to the side of the road. Accused's motor vehicle was checked. He was advised that he was carrying passengers using a non-public service vehicle and that he would be escorted to the Zimbabwe Republic Police Station at Queenspark. He was informed that he was to pay an admission of guilt fine. The accused then produced cash amounting to 50 Rand and offered it to the police officer so that he could proceed with his journey. The accused was promptly arrested for bribery and was taken to Queenspark Police Station. The 50 Rand was taken as an exhibit. The accused admitted the offence and was taken to court. Applicant was convicted on his own plea of guilty and has since noted an appeal against sentence only.

Submissions by the Applicant

Applicant contends that he is a suitable candidate for bail. He argues that his appeal carries bright prospects of success on appeal. Applicant avers that the court *a quo* misdirected itself by not giving cogent reasons for failing to impose Community Service in view of the fact that the effective custodial sentence fell within the grid of Community Service sentences. In any event, the applicant argues that the learned Magistrate over-emphasised the seriousness of the offence to the extent that he fell into a misdirection. Further, the court *a quo* paid lip service to the applicant's mitigating and personal circumstances.

In his reasons for sentence, the learned Magistrate said the following:

“Bribing a Police Officer goes against the above well laid operations of the police service as envisaged by the Constitution. It seeks to bring in favour for the accused, stop the maintenance of law and order as well as take away the power to prevent crime by the police in exchange for a reward not due to them.”

Whilst I agree with the learned Magistrate that anything to do with corruption should be taken seriously, each individual case must be determined on its merits.

In assessing whether the applicant is a suitable candidate for bail pending appeal, this court should have regard to:

- (a) the likelihood of the applicant absconding considering the sentence imposed.
- (b) the prospects of success on appeal.
- (c) the right of the individual to liberty.
- (d) the likely delay before the appeal can be heard

See: *S v Williams* 1980 ZLR 466 (SC).

In the present case, the state has not argued that there is a risk of abscondment. It is common cause that appeals do take time to be heard and there is a real possibility that applicant would have served a greater portion, if not the entire sentence by the time the appeal is heard. There are reasonable prospects of success on appeal. This is not one of those cases where the appeal is doomed to fail.

For the foregoing reasons, I make the following order.

1. The application be and is hereby granted in terms of the Draft Order.

Sengweni Legal Practice, applicant's legal practitioners

National Prosecuting Authority, respondent's legal practitioners