

TAFADZWA GOREMUSANDU

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
DUBE-BANDA J
BULAWAYO 30 DECEMBER 2021 & 13 JANUARY 2022

Application for reinstatement of bail

B. Sengweni for the applicant
K.M. Guveya for the respondent

DUBE-BANDA J: This is an application for reinstatement of bail pending appeal. This application is not opposed. The applicant and a co-accused were arraigned before the Magistrates' Court sitting in Gwanda. They were charged with the crime of contravening section 114 of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. It being alleged that on the 15th February 2014, and at Insindi Farm, Gwanda applicant and his co-accused unlawfully stole six cattle, the property of the complainant. Applicant pleaded not guilty to the charge. After a protracted trial applicant was convicted and sentenced to eighteen years imprisonment.

The background to this application is that applicant was aggrieved by his conviction and noted an appeal to this court under cover of case number HCA 156/14. He subsequently filed an application for bail pending appeal. The bail application was granted on the 11 July 2014 (HCB 96/14). Applicant did not prosecute his appeal in terms of the requirements of the law and on the 15 September 2016 the appeal was deemed abandoned and dismissed. As a result of the dismissal of his appeal his release on bail automatically lapsed and he was taken into prison to commence serving his eighteen year sentence. He then made an application (HCA 22/21) for the reinstatement of his appeal and it was granted on the 27 October 2021. The appeal is now pending finalization.

The grounds upon which applicant seeks to be released on bail pending appeal are set out in his written statement in support of this application. It is contended that the applicant has prospects of success on appeal and that if released on bail he will not abscond. At the commencement of the hearing Mr *Sengweni* counsel for the applicant argued that in essence this is an application for reinstatement of bail. The high watermark of counsel's submission is

that in first bail application (HCB 96/14) this court was satisfied that it was in the interests of justice for applicant to be released on bail, and nothing has changed.

Counsel contended that this court in releasing him on bail pending appeal must have reasoned that his appeal has prospects of success and that notwithstanding the gravity of the offence and the sentence imposed there was no likelihood of abscondment. I agree. This is what this court found in HCB 96/14. This is so because it is the basis upon which a court may release a convicted and sentenced person on bail pending appeal. It is this aspect of this case that has caused me most trouble. I say so because I have read the entire record of proceedings from the trial court and I asked counsel to address the prospects of success and I have serious reservations about applicant's prospects of success on appeal. Notwithstanding such serious reservations I have taken the position that I should not revisit the inquiry whether applicant has prospects of success on appeal. I have come to this conclusion on the basis that it is this court that found that he has such prospects of success on appeal. I take the view that in the circumstances of this case it is neater and appropriate not to revisit such an inquiry.

I have also taken into account that the lapse of applicant's bail was not because he had voluntarily violated the conditions of his bail. The lapse was occasioned by his erstwhile legal practitioners who failed to prosecute the appeal in terms of the provisions of the law and this resulted in his appeal being deemed abandoned and dismissed. The appeal has now been reinstated, it is now pending. Generally it would be appropriate that the *status quo* that existed prior to dismissal of the appeal be restored. The *status quo* is that applicant was on bail pending appeal. See: *S v Khan* HH 66/2006. This is the *status quo* that I intend to restore. In the premises applicant's bail pending appeal is reinstated.

In the result, I order as follows:

1. Applicant's bail order in HCB 96/14 be and is hereby reinstated on the following conditions:
 - i. Applicant to pay the sum of ZW\$50 000.00 as bail deposit with the Registrar, High Court, Bulawayo.
 - ii. Applicant to reside at No. 3097 Spitzkop North Extention, Gwanda until the finalization of his appeal.
 - iii. Applicant to report at Gwanda Police Station twice a week on Mondays and Fridays between 6 am and 6 pm until the finalization of his appeal.

Sengweni Legal Practice, applicant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners