

MNCEDISI NDLOVU  
**versus**  
THE STATE

HIGH COURT OF ZIMBABWE  
MOYO J  
BULAWAYO 18 JANUARY AND 25 FEBRUARY 2016

### **Bail Application**

*R. Ndlovu* for the applicant  
*K. Ndlovu* for the respondent

**MOYO J:** The applicant in this matter was arraigned before the magistrate in Kezi charged with stocktheft as defined in section 114 of Criminal Law Codification and Reform Act [Chapter 9:23]. He pleaded guilty and the court having found no special circumstances he was then sentenced to the mandatory minimum sentence of 9 years imprisonment.

He has appealed and although the notice of appeal gives his appeal as against sentence only, in his submissions he has attacked the conviction as well. The appeal seems to be premised on the fact that special circumstances do exist in this matter.

The brief facts of the matter are that the complainant and the applicant are related. The allegations against the applicant are that sometime during the month of December 2014 complainant released her three beasts into the grazing area of Mncwazini.

That some time between 1 December 2014 and 3 July 2015 the applicant went to the pastures and took complainant's brown branded heifer and put some ear marks. The applicant also put his cowbell on the heifer. The heifer later strayed back to the complainant's head leading to the applicant's arrest. Upon being confronted by the neighbourhood watch committee the applicant claimed that the beast was in fact his. The beast was recovered.

The applicant was convicted on his own plea of guilty and special circumstances not having been found he was sentenced to the mandatory minimum sentence of 9 years imprisonment

In mitigation the applicant stated thus:

“The beast looked similar to mine, but I never carried out a verification exercise” and further responding to special circumstances he stated thus:

“ I made an error, I wronged.”

Clearly right from the state outline, the facts point towards an insistence by the applicant that the beast was his. In mitigation he stated that the beast looked similar to his although he never carried out a verification exercise.

In order to succeed in applications of this nature the applicant, must show that he has prospects of success on appeal and that the interests of justice will not be jeopardised by his release on bail. Refer to the case of *S v Tengende and Others* 1981 ZLR 445.

In this matter clearly there is a point that seems to require further probing and assessment, the issue of whether applicant was indeed mistaken or not when he took the beast. His criminal intent, in my view requires further, probing and there is a possibility that the court sitting an appeal may arrive at a different conclusion. It is for these reasons that I find that the applicant has prospects of success. Again, the applicant is a family man, with six children, has ten beasts, four goats and five donkeys. The information in the court record points towards a family man and thus it can not be found that the interests of justice will be prejudiced if he is released on bail pending appeal. As for the issues with the notice of appeal I am off the view that applicant’s counsel is in a position to attend to the deficiencies or ambiguity therein so much so that justice is achieved at the end of the day. It is for these reasons that I did not assess the technical issues related to the notice of appeal.

I am satisfied that the applicant does have prospects of success on appeal and that his release on bail pending that appeal will not prejudice the interests of justice. I accordingly grant the order for bail in terms of the draft annexed to applicant’s papers.

*Messrs R. Ndlovu and Company*, applicant’s legal practitioners  
*National Prosecuting Authority*, respondent’s legal practitioners