

**SIBANGANI DUBE**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 16 JULY & 2 AUGUST 2018

**Bail Application**

*K. Ngwenya* for the applicant  
*L. Muduma* for the respondent

**MAKONESE J:** The applicant aged 41 years is facing one count of contravening section 60A (3) (b) of the Electricity Act (Chapter 13:19); that is to say cutting, damaging or stealing electricity copper cables, supplying electricity. It is alleged that on an unknown date but in June and July 2018 along Cross-Dete/Binga road and around 0100 hours complainant and three other members of a joint team of ZETDC and the Zimbabwe Republic Police were patrolling the ZESA power line in that area. They came across a white Honda Fit vehicle registration number ACY 7299 parked on the side of the road. They lay an ambush and took positions near the motor vehicle. As applicant was opening the motor vehicle he was apprehended and arrested by the police. The applicant's motor vehicle was searched and 50 kilograms of copper cables were recovered.

The applicant denies the allegations and states in his bail statement that he is shocked by the allegations. He contends that he has no knowledge at all of the copper cables. At the hearing of this application, *Mr Ngwenya*, appearing for the applicant, stated that applicant had gone to Binga to look for fish. He left his motor vehicle by the road side. When he came back and was about to enter his motor vehicle, he was surrounded by police detectives who arrested him on allegations of cutting copper cables.

The applicant proffers a bare denial to the allegations. He alleges that the state has not mentioned that anyone was seen cutting copper cables along the power line. Further, the

applicant alleges that there was no report of any interference in the distribution or supply of electricity in the area. Applicant makes a bold averment that he did not “cut”, “damage” or “steal” any electricity cables.

It is clear that the applicant has not raised any recognizable defence at law. He has made a bare denial of the allegations. The applicant does not explain his possession of the electricity cables. He does not dispute that he was found in possession of the copper cables. There is no suggestion that someone planted the copper cables in his motor vehicle.

In terms of section 70(1) of the Constitution of Zimbabwe (Amendment No. 20), 2013, it is provided that:

“Any person accused of any offence has the right to be presumed innocent until proven guilty”.

While it is the right of any accused person to be admitted to bail pending trial, such right does not operate in a vacuum. The applicant in an application for bail must demonstrate that the granting of bail will not compromise the due administration of justice. The accused bears no onus to prove his innocence, but must put forward a defence which is reasonably possibly true. In this case the applicant was apprehended by the police with motor vehicle laden with copper cables. He failed to give any explanation for his possession of the stolen copper cables.

Applicant’s legal counsel has referred me to the case of *S v Felody Munsaka* HB-55-16, wherein this court took the view that where the state is opposing bail there must be compelling reasons to deny bail. In this matter the police have indicated that the applicant is not a good candidate for bail. If granted bail he is likely to abscond.

I am satisfied that in this matter the state has a very strong case against the applicant who was caught at the crime scene. If convicted of the offence the applicant faces a mandatory sentence of 10 years imprisonment. The applicant may be induced to abscond if granted bail. The applicant is not a suitable candidate for bail.

In the circumstances, the application for bail is hereby dismissed.

*Mabhikwa, Hikwa & Partners*, applicant's legal practitioners  
*National Prosecuting Authority*, respondent's legal practitioners