

MEMORY MUSEZA
versus
THE STATE

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 30 September and 26 November 2013

Bail application

T. Takaendesa, for the applicant
S. Fero, for the respondent

BHUNU J: The applicant was convicted on her own plea of guilty to 8 counts of fraud as defined in s 136 of the Criminal Law (Codification and Reform) Act [*Cap 9:23*]. The total amount of prejudice is US\$19 000.00 of which nothing was recovered. She was sentenced to 4 years imprisonment of which 6 months was suspended on condition of good behaviour. A further 18 months imprisonment was suspended on condition she makes restitution to the complainants leaving a total effective sentence of 2 years imprisonment.

The applicant has since lodged an appeal to this Court against sentence only. For her to succeed she has to prove on a balance of probabilities that she has bright prospects of success on appeal. I have carefully gone through the record of proceedings and it is difficult for me to say that the trial magistrate misdirected himself at all.

The applicant's strongest point is that she is a young first offender with an infant child. It appears that in sentencing the accused the magistrate properly took into account all those factors. The applicant stole from various complainants not once but on 8 different occasions. Her moral blameworthiness is therefore of a very high degree indeed. While the courts are generally averse to sending lactating mothers to jail the applicant's moral blameworthiness is such that imprisonment was unavoidable. She is therefore solely to blame for the consequences that have now befallen her child.

Even if the Appeal Court were to be lenient with her, I do not see it imposing a wholly non custodial sentence considering that to date she does not appear to have paid any compensation as ordered by the trial court.

It appears to me that the applicant's circumstances are such that she is beyond redemption. Although I have agonized over how the child can be saved from being sacrificed

over the sins of its mother it appears that there is no way out of that predicament. That being the case I can only dismiss the application.

It is accordingly ordered that the application for bail be and is hereby dismissed.

Mugiya, Macharaga Law Chambers, the applicant's legal practitioners.
Attorney General's Office, the respondent's legal practitioners.