

MISHECK RUPEYO  
and  
FUNGAI SAIKONDA  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
BHUNU J  
HARARE, 24 March 2015 and 5 May 2015

### **Bail Application Pending Appeal**

*J Ndomene*, for the applicants  
Mrs *S Fero*, for the respondent

BHUNU J: This is an application for bail pending appeal. Both applicants were convicted of robbery as defined in s 126 of the Criminal Law (Codification and Reform) Act [*Chapter: 23*] after a protracted trial and sentenced to 5 years imprisonment. Aggrieved by both conviction and sentence they appealed to this court for relief under case number AC744/14.

They now apply for bail pending appeal. In their application the applicants allege that they have bright prospects of success on appeal because the court *a quo* erred in convicting them of robbery in the absence of credible evidence establishing that they are guilty of the offence. Their other complaint is that the sentence of 5 years imprisonment imposed by the trial court is so manifestly excessive as to induce a sense of shock. As such they reckon that it will be reduced on appeal to the extent of attracting a non-custodial sentence.

The facts giving rise to their conviction and sentence are that they are alleged to have robbed one Nelson Chikama the human resources manager of Central Feeds (Pvt) Ltd in Norton of US\$15 875.00. The two applicants are alleged to have hatched a plan to rob the complainant. On 30 June 2014 they teamed up with Phillip Saikonda and Tawanda Kubvoruno who are both now deceased and proceeded to the complainant's office at number 229 Galloway Road Norton. They used a get-away Toyota Spacio registration number ACL 6740.

They stormed the complainant's office after he had just received cash for wages. They threatened him with death manhandled him and relieved him of US\$15 875.00. They tied up the complainant's hands and mouth whilst their accomplices stood guard outside the premises ready to escape with the loot.

Meanwhile the police who had heard wind of the impending robbery immediately reacted by laying an ambush at the premises. Both applicants were accounted for in the ambush and apprehended red handed right inside the premises still in possession of the stolen money. Their accomplices parked outside the company premises were accounted for in a dramatic high speed police chase and shoot out in which both accomplices were fatally wounded resulting in the recovery of the get-away motor vehicle.

In their defence the applicants denied the charge alleging that they had stage managed the robbery with the connivance of the complainant. They thus admitted stealing the money but denied robbing the complainant arguing that he was a willing victim and accomplice to the crime.

Whether or not the applicants are guilty of robbery or theft is for the appeal court. The bottom line is however that they are at the very least guilty of theft of US\$15 875.00. If their word is to be believed they are guilty of a serious species of theft involving a high degree of premeditation, sophistry and careful planning. The courts always take a serious view of organised crime coupled with an element of corruption.

The Courts also take a stern view of robbery for obvious reasons. It therefore follows that whatever the verdict of the appeal court imprisonment for a substantial period of time is unavoidable. It is therefore in the best interest of the due administration of justice that the applicants must start serving their respective sentences. It is accordingly ordered that the application for bail pending appeal be and is hereby dismissed.

*Maposa Ndomene Maramba Legal Practitioners, applicants' legal practitioners*  
*Prosecutor General's Office, respondent's legal practitioners*