

FORTUNE SIBANDA  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
PHIRI J  
HARARE, 7 July and 20 July 2017

### **Ruling**

Applicant *in person*  
*T Mapfuwa*, for the respondent

PHIRI J: This is an application for bail pending appeal. The applicant was convicted of contravening s 3 (1) of the Precious Stones Trade Act [*Chapter 21:06*].

He pleaded not guilty but was convicted and sentenced to a mandatory sentence of five years imprisonment.

Applicant has filed an appeal against both conviction and sentence. In support of his application for bail applicant averred that as regards his conviction he maintained that he was not found in possession of the precious stones. He also is challenging the fact that the police “unceremoniously released the other people who were in the company of the applicant.”

Applicant also appealed against sentence. Applicant argued that the court *a quo* erred in holding that there were no special circumstances in the matter. Applicant also argued in support of his bail application that the court *a quo* gave a narrow definition of special circumstances.

Applicant cited various cases in which a broader interpretation of the concept of “special circumstances” these cases include;

*State v Chimukuche* 1997 (1) ZLR 533

*State v Kamutande* 1983 (1) ZLR 303

*State v Dube* HC –H 430-83

The applicant also cited cases where the courts were reluctant to impose the “minimum penalty”.

In the case of *State v Arab* 1990 (1) ZLR 253 as McNALLY JA, as he then was stated;

“The axe, in it seems to me has been falling largely on the wrong necks.... We are dealing with legislation designed to furnish and prevent economic sabotage. In these circumstances it seems to me wrong to impose a mandatory minimum sentence on persons found in possession of a piece of rock, technically emeralds, which are officially found to be of no commercial value.”

In this case the applicant submitted that the diamonds in question were valued at \$98.79. This court agrees that this could not be the type of case intended to be visited with a mandatory sentence.

This court holds that as against sentence, the appeal lodged in this matter is arguable and it would be in the interests of justice that the applicant be admitted to bail as there are prospects of success on appeal.

Accordingly the applicant is hereby admitted to bail pending appeal.

*National Prosecuting Authority, for the State*