

THE STATE
versus
GODFREY GANDAWA
and
SHEPHARD HONZERI
and
NICHOLAS MAPUTE

HIGH COURT OF ZIMBABWE
CHITAPI J
HARARE, 5 November, 2018

Assessors 1. Mr Barwe
2. Mr Chimonyo

Criminal Trial-Postponement

C. Chimbari, for the State
B. Chidziva, for the 1st Accused
No appearance for 2nd accused
M. Nkomo, for 3rd Accused

CHITAPI J: The 3 accused persons appeared before this court on 21 May, 2018 facing 3 counts of fraud, 4 counts of Criminal Abuse of duty as a public officer, 4 counts of Money laundering and 3 counts of corruptly concealing from the principal a personal interest in a transaction. They did not plead to the charges. When the 3 initially appeared as aforesaid, they were part of an indictment which listed 5 accused persons. The other 2, namely Jonathan Moyo and Frederick Mandizvidza had charges against them withdrawn before plea. Jonathan Moyo was not served with the indictment whilst Frederick Mandizvidza was present. As to what transpired, reference is made to my judgment HH 478/18. Suffice however that the trial was postponed to today and the accused persons were ordered by the court to appear for their trial.

At 10.20 am when the court convened, the 1st and 2nd accused persons were in default after their names were called three times as per procedure. The State counsel and 3rd accused's counsel agreed that the trial be postponed to 30 November, 2018. I issued warrants of arrest in respect of the 1st and 2nd accused. The State counsel advised that the 2nd accused's counsel had

telephoned him to advise him that he was within the building trying to file the 2nd accused's defence outline. The 2nd accused was however not in attendance and a warrant for his arrest was similarly issued.

At 10.40 am after adjourning the court, I was advised by the Registrar that the 2nd accused and his counsel Mr *Nyakunika* had arrived. The State counsel Mr *Chimbari* was still available. I cancelled the warrant of arrest by consent of Mr *Chimbari* after Mr *Nyakunika* explained that he had delayed whilst trying to find cheap photocopying facilities because the 2nd accused did not have enough financial resources. Mr *Nyakunika* must be reminded that counsel owes a duty to inform the court and seek the court's indulgence if counsel is unable to commence trial at the scheduled time. It is always important to appreciate that a criminal court is constituted by various stake-holders who all come into the court room at the scheduled time. There is the police court orderly, interpreter, prison wardens and witnesses and members of the public who will be in waiting. It is important and respectful to the court and the other stakeholders that counsel appears at the appointed time, explains his or her challenges and applies for the matter to be stood down to a time when counsel is available and ready to have the trial proceed. Criminal trials are not child's play and must always be taken seriously because they concern rights to liberty and are of public interest. Highest standards of ethics and professionalism must be exhibited at all stages not only by counsel but by every other court officer involved in criminal trials.

The second matter that I note in passing is that this indictment has been pending since 31 March, 2018 when the accused persons were indicted. In the absence of showing circumstances beyond the control of the Prosecutor General which result in the absence or inability of an accused person to stand trial, a failure to bring to trial an accused person who has been indicted within 6 months of the indictment date, renders the indictment stale. The court is under such circumstances required to dismiss the case. The Prosecutor General should therefore ensure that the trial of the accused persons who have always been available is held within the times provided for by the law. Whilst the decision to continue with a prosecution is entirely up to the Prosecutor General, the court notes that the case has had more than one false start and the High Court is not a remand court. In terms of s 137 of the Criminal Procedure and Evidence Act, [Chapter 9:07], once an indictment in any criminal case is lodged with the Registrar, the case is deemed as pending in this court.

Like any other pending case, the court has to manage the case time wise. A lapsed indictment necessarily means that there is no valid indictment before the court. The court

should not allow its time to be wasted by scheduling a hearing which is doomed for an abortive or false start. Both the Prosecutor General and defence counsel should therefore agree the way forward beforehand.

That said, I make the following order:

- (i) The 1st accused Godfrey Gandawa having been called 3 times and being in default, a warrant of arrest for the accused's apprehension shall issue.
- (ii) In respect of 2nd and 3rd accused, they are each ordered to appear before the court on 30 November, 2018 at 10:00 am, their trial being postponed to that date by consent.

National Prosecuting Authority, State's legal practitioners
Kantor and Immerman, 1st accused's legal practitioners
Mupindu legal practice, 2nd accused's legal practitioners
DNM Attorneys, 3rd accused's legal practitioners