

RUSSEL WAYNE LABUSCHANGE

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
CHIWESHE J
BULAWAYO 22 & 28 NOVEMBER 2002

J James for the applicant
H Ushewokunze III for the state

Application to Vary Bail Conditions

CHIWESHE J: The applicant is charged with murder. He is currently on bail. One of the bail conditions is that he surrenders his passport. He now applies for a variation of that condition on the grounds that he wishes to attend a fishing convention in South Africa and would need to be allowed to uplift his passport for that purpose.

The state is opposed to this application. With the consent of both parties I have consulted my brother KAMOCHA J, the trial judge. Both of us are agreed that it would not be in the interests of justice to accede to the applicant's request for the following reasons:

- (i) The trial is virtually concluded. The parties await judgment. Judgment will be handed down any time from now. In the premises we see no point in granting the indulgence that the applicant seeks. We appreciate that applicant has been on remand for at least three years, be it on bail. We also appreciate the fact that he has faithfully complied with his bail conditions all along. But the point is that the matter is about to be concluded one way or the other. He might as well await the outcome of the trial. His present bail conditions are not overbearing, given the nature of the charge.
- (ii) We are not convinced that it is of absolute necessity that the applicant attends the fishing convention. No such compelling reasons have been put forward. It has not been shown that applicant would suffer irreparable harm if he did not attend the fishing convention.

- (iii) Whilst applicant has up to now observed the conditions attached to his bail, in cases of this nature there is always a possibility, however remote, that an accused person may abscond. It would not be in the interest of justice at this late and critical stage of the case to take that gamble.

For these reasons the application cannot succeed. It is hereby dismissed. My brother KAMOCHA J agrees with this decision.

I have been asked by the trial judge to advise the parties that this decision has nothing to do with the merits of the matter under trial. And I must record that the trial judge has not discussed with me such merits nor has he made any indication to me as to which way the judgment will go. This decision has been based on principles applicable to bail applications in general and not on the merits of the case under trial.

James, Moyo-Majwabu & Nyoni applicant's legal practitioners
Attorney-General's Office respondent's legal practitioners

c.c. – Kamocho J – High Court - Harare