

**CRISSY SIMUKOKO**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
CHEDA J  
BULAWAYO 25 NOVEMBER & 12 DECEMBER 2002

*Mrs C Nleya* for the applicant  
*H Ushewokunze III* for the respondent

Bail Appeal

**CHEDA J:** This is an appeal against the magistrate decision denying appellant bail pending trial.

The brief facts according to the respondent are that appellant is a man aged 24. On 2 August 2002 he is alleged to have broken into Greys Inn Hotel and stole a Toshiba Computer laptop value \$1.3m (one million three hundred dollars) which belonged to a guest Mr Freddy Gweme. Upon his arrest appellant was found in possession of an Acer laptop computer which he could not account for at that stage. However, it has since been established, that the said laptop computer belongs to one Ainsley Rollo of Harare who lost it through a break-in while he was staying at Zak's Place a hotel in Bulwayo.

Appellant is a Zambian national who on his arrest he implicated another Zambian national Joseph Mwanza who is still at large but is believed to be in South Africa.

On 26 August 2002 appellant applied for bail which was refused by the magistrate sitting in Bulwayo for which this appeal is based. Appellant contended that he should be admitted to bail pending his trial on condition that he:-

1. Deposits \$100 000 cash with the registrar of the High Court
2. Reports three times a week at Marlborough Police station, Harare
3. Surrenders his passport to the Registrar of the High Court
4. He stays at 1767 Bemhiwa Close, New Marlborough, Harare

On the other hand the respondent opposed bail on the following grounds:

1. That the appellant is a Zambian national and does not have a contact address in Zimbabwe and he may therefore abscond
2. He was found in possession of stolen two laptops valued at \$2.6m
3. He may interfere with witnesses namely Joseph Musanga who is also a Zambian national and is believed to be in South Africa
4. That investigations are still in progress.

The principle of presumption of innocence until proven guilty by a competent court is religiously followed in our legal system. An accused should therefore not lightly be deprived of his liberty in the absence of evidence laid before the court which indicate on a balance of probabilities that his release on bail may jeopardise the proper administration of justice. The gravamen of the matter is that the accused should be able to stand trial after his release on bail. Therefore, where possible the courts will always lean in favour of his release.

Appellant laid down 4 conditions which should attach to his release on bail (*supra*). I find that conditions 1 – 3 (*supra*) to be valid and easy to implement. But the fourth condition which relates to where he is to reside until the matter is finalised casts some doubt on his sincerity and honesty. He stated through his legal practitioner that upon release he will reside at 1767 Bemhiwa Close, New Marlborough, Harare with his brother Joseph Simukoko who is married to a Zimbabwean woman, one Temptation Sibindi. The house in question is said to belong to Ms Sibindi's brother. In support for this averment applicant filed a "note" inscribed as follows:

“Attention: Mr Hikwa (his then legal practitioner)

TO WHOM IT MAY CONCERN

I do confirm that Joseph Zimukoko resides at number 1767 Bemhiwa Close, New Malborough, Harare and Criss is his young brother.

Robert Gutsha Sibindi  
National I.D – 63-316157 J 56  
Cell – 091 269 006

Owner of the above property”.

The “note” was supposed to serve as proof that appellant had a place to reside at while on bail. The “note” with all due respect, falls far short of being authentic for the following reasons:

1. The appellant’s surname is recorded as Simukoko that of his brother is Zimukoko
2. It is neither dated nor signed
3. It is not clear how it was submitted to his then legal practitioner i.e. whether it was faxed or sent by post as it appears to be a photocopy.

Appellant as a foreigner should submit concrete evidence of his residence and such evidence should be such that it removes any doubt about its authenticity. This is very pertinent, for it is on that basis that the court should strongly consider his release upon satisfaction of his abode. *Mrs Nleya*, the legal practitioner who subsequently appeared on his behalf admitted that the initial application submitted by *Mr Hikwa* indeed, did not adequately address the issue relating to this “note”. She indeed found herself in quick sand on that point.

Appellant must prove on a balance of probabilities that his release on bail will not result in the frustration of the proper administration of justice. In the present case I find that lack of proof of his abode on his part militates against his quest for

release on bail as the court cannot release him to a place whose ownership and/or occupation is in doubt.

Respondent argued that if released on bail he is likely to interfere with evidence against him, is in my view without merit as the police are in possession of all the evidence against him in that all the property has been recovered. Mere suspicion without substantiated evidence is insufficient to justify appellant's deprivation of his liberty. The respondent should be able to show that appellant will and not may interfere with state witnesses and such witnesses should be stated. See *S v Bennett* 1976(3) SA 652 (C). It is not proper for the respondent to leave it to the appellant to speculate who these witnesses are so as to regulate his conduct accordingly.

Respondent further argued that appellant may commit further offences if granted bail. This argument although not made clear, is based on the fact that he was linked with the previous theft of a laptop at Zak's Place, Bulawayo. This in my view does not, however, show that he has a propensity of committing crimes. The propensity to commit further crimes should be considered in conjunction with other relevant factors such as the seriousness of the crime and public harm which will follow if released on bail. The list is inexhaustive.

Therefore, there should be a real likelihood that appellant will commit further offences while on bail. See *S v Patel* 1970 (3) SA 565 (W) and *R v Shaw* 1922 TPD 203.

Appellant has failed to convince me that he has a fixed abode wherein he will reside until his matter is finalised. It is important for the state to know where an

ordinary, that is a Zimbabwean citizen resides and it is even more important for such knowledge where the suspect is a foreigner, for his escape will no doubt ground the proper administration of justice to a halt.

I therefore, find that there is no merit in this application and is accordingly dismissed.

*Mabhikwa, Hikwa & Nyathi Legal Practitioners* applicant's legal practitioners  
*Attorney General's Office* respondent's legal practitioners