

**BENJAMIN MAKETO**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
CHIWESHE J  
BULAWAYO 23 JANUARY 2003

*N Mazibuko* for the applicant  
*Mrs I M Nyoni* for the respondent

Bail Application

**CHIWESHE J:** The applicant and two others had their application for bail refused by the Magistrates' Court. They appealed against that decision. I dealt with that appeal under judgment number HB 132/2002 (Case No. HCB 188-90/200) (CRB 9922-3/02) and dismissed it. For ease of reference I incorporate herein a copy of that judgment.

Soon after the dismissal of that appeal the applicant and the two others approached the Magistrates' Court seeking their removal from remand occasioned by the same allegations in respect of which bail had been refused. The Magistrates' Court dismissed that application. Subsequently the three made an application to this court seeking the granting of bail on the grounds that there had been a change in circumstance. The application was dismissed on the grounds that the initial application for bail had been made in the Magistrates' Court and therefore any application based on change of circumstances must be directed to that court.

In the present case the applicant faces not fresh charges "*per se*" but instead further charges arising out of the same investigation. It is alleged in addition to the

allegations dealt with in the above judgment of this court that the applicant had accepted the sum of \$300 000,00 from one Sithembiso Dube and had arranged with another to demand from the same Sithembiso Dube the sum of twelve thousand United States dollars in order that he covers up the case involving one Sidingimuzi Ncube. The applicant's conduct in this regard would, if proved, constitute an offence under the Prevention of Corruption Act, Chapter 9:16.

In bringing an application for bail only in respect of these further charges the applicant seeks in essence to break the overall investigations into separate charges in respect of which he may seek bail. It is not inconceivable that he may if entertained obtain bail with regards some of the charges and fail on the others. That approach should not be encouraged. All the charges arise from the same investigation. If the applicant were to be tried there would only be one trial with a number of counts. All the counts would relate to an alleged contravention of the same sections of the Prevention of Corruption Act. All of them would emanate from basically the same facts, namely the corrupt manner in which the applicant and others are alleged to have dealt with suspects in the armed robbery that occurred at Johannesburg International Airport, South Africa.

Essentially therefore we are dealing with one case. Charges arising at this stage are in addition to the original charge. They cannot be treated separately. If anything they aggravate the original charges. The same considerations dealt with in the original bail application before the magistrate and the subsequent appeal judgment of this court still apply.

For these reasons I see no reason why this court should entertain the present application. Accordingly, it is ordered that the application be and is hereby dismissed.

*Calderwood, Bryce & Hendrie*, applicant's legal practitioners

*Criminal Division of the Attorney-General's Office*, respondent's legal practitioners