

PAUL SIWELA

And

GEORGE MKWANANZI

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
CHIWESHE J
BULAWAYO 3 APRIL AND 22 MAY 2003

N Mathonsi for the applicants
Mrs M Cheda for the respondent

Bail Application

CHIWESHE J: The applicants who face charges under the Public Order Security Act Chapter 11:17 were on 17 December 2002 granted bail by this court as follows:

“It is ordered:

That bail be and is hereby granted upon the following terms and conditions:

That each applicant:-

1. Deposits with the Assistant Registrar of this honourable court the sum of \$50 000,00.
2. Surrenders his travel documents to the Assistant Registrar of this honourable court.
3. Reports three times a week at Bulawayo Central Police Station, that is to say once every Monday, once every Wednesday and once every Friday between 0600 hours and 1800 hours.
4. Be and is hereby restricted in his movements, to an area within 40 km radius from the Bulawayo Main Post office.
5. Resides in the case of the first applicant at number 18 4th Avenue, Woodville, Bulawayo and in the case of the second applicant at number 3998 Emganwini Suburb, Bulawayo.

The applicants seek an order varying the above bail conditions, specifically

paragraphs 3 and 4 which according to them should be deleted.

In support of that application the first applicant argues that the said conditions militate against the effective running of his business, the sole source of his income. He runs a chemical company with business interests spread around the major urban centres of Zimbabwe. He is presently unable to travel in pursuit of the business interests. Further he argues that his parents are in Victoria Falls. They are unemployed and solely dependent on him for their upkeep. Further he argues that as he needs on many occasions to work out of town, his itinerary is disrupted by the need to report at Bulawayo Central Police Station no less than three times per week. The reporting conditions require that he travels to and from the police station. Neither fuel nor reliable public transport is readily available for that purpose. He further argues that these facts were unknown to the court at the time bail was granted. As such these facts constitute a change of circumstances.

The second applicant is a teacher at Sizane Secondary School in Pelandaba. He has applied for a position to head a school at Tsholotsho in order that he be near his ailing parents. Should he be offered that post the present bail conditions would prevent him from taking it up. Further he states that he is an 'A' level examination worker and a resource person for English Literature. Both these roles require that he travels around the country assisting teachers. He also is involved in the setting of examinations and is required for that purpose to report at a central venue in Harare. He cannot do so with the present bail conditions in force.

Further the reporting conditions mean that he has to abandon his class at Sizane Secondary School in order that he reports at the Bulawayo Central Police Station.

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These facts he argues were not before the court at the time that bail was granted and as such they constitute a change of circumstances.

The respondents have opposed the application to vary the bail conditions. The main reason for that contention is that it is not in the interests of justice that the conditions be varied. In this regard it is argued that the conditions were set so as to maintain law and order and the perceived threat to state security.

I will accept that at the time the bail conditions were set, the court did not have at its disposal information as to the exact impact of the conditions on the lives of the applicants. The court was however aware of the general impact of imposing restrictions on the applicants' movements and the reporting conditions. In that regard it cannot be argued that because details of that impact have now been furnished, those details alone constitute a change in circumstances. Alternatively put, if those details had been given at the time, would the court have imposed the conditions that it did? That question must be answered in the affirmative. Paramount in the court's mind at the time was the question of state security. The allegations against the applicants are serious. Should they be true there is no doubt that their conduct could lead to a tribal conflict whose consequences would amount to a serious threat to state security. Balancing the rights of the applicants to their liberty against a breakdown of law and order of that magnitude, it seems prudent that the applicants' liberty be curtailed pending trial. For that reason I see no reason why paragraph 4 of the bail conditions should be tempered with.

I note however that despite the passage of time no trial date has been set. The applicants have been complying with the bail conditions to the letter. It seems to me that no prejudice would arise in the event that the reporting conditions were relaxed.

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The respondent is not opposed to a relaxation of the reporting conditions.

It is accordingly ordered as follows:

That the bail conditions set by this honourable court dated 17 December 2002 shall remain in force save for paragraph 3 thereof which is amended to read as follows:

- “3. Reports once every Friday of the week at Bulawayo Central Police Station between 0600 hours and 1800 hours.”

Messrs Coghlan & Welsh applicants' legal practitioners
Attorney-General's Office respondent's legal practitioners