

**KHULEKANI KESWA**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
CHEDA J  
BULAWAYO 16 DECEMBER 2004

*H S Shenje* for applicant  
*P A Mpofu* for respondent

Bail Pending Appeal

**CHEDA J:** Applicant was jointly charged with one Liberty Mlambo with 4 counts of housebreaking with intent to steal and theft. The total value of the property stolen is \$40 200 000 of which \$26 000 000 was recovered. They pleaded not guilty but were however convicted and sentenced to a total of 156 months imprisonment.

Applicant noted an appeal against both conviction and sentence and now applies for bail pending appeal. The guarding principles for bail pending appeal are well laid down in *S v Williams* 1980( ) ZLR 466; *S v McGowan* 1995 ( ) ZLR 81 (S) and *S v Dzawo* 1998(1) ZLR 536(S). There are two considerations to be borne in mind in determining bail pending appeal, namely the prospects of success and abscondment.

Mr *Shenje* for applicant has argued that the conviction is likely to be set aside and therefore the sentence will naturally fall away.

Mr *Mpofu*, for respondent on the other hand has vigorously argued that there is no merit in the appeal against conviction but however, concedes that there is a likelihood of the appeal court interfering with the sentence by way of reduction of a prison term. This concession, in my view is properly made, as I am also of

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the view that the cumulative effect of the sentences imposed is certainly out of step of decided cases.

It is respondent's fear that if released on bail applicant is likely to abscond. Having agreed with applicant that his sentence is likely to be reduced this must be understood that in my view it will be a mere reduction but not a substitution thereof. The circumstances surrounding the conviction of these offences and the value of the stolen property will in my view result only in the reduction of the prison term but not a substitution with a non-custodial sentence. It therefore stands to reason that there will be no actual prejudice to applicant as he will serve a prison sentence anyway. If he is released on bail, his chances of abscondment are quite high as naturally would not want to re-visit prison after his temporary new found freedom. As long as the reduction of his prison term is within the time within which the appeal will be heard, there is no point in releasing applicant on bail. If he absconds this will result in the hindrance of the proper administration of justice and these courts will be failing in their duty if they accord him a chance to achieve this objective.

For the above reasons, application is dismissed.

*Shenje & Company, applicant's legal practitioners*  
*Criminal Division of the Attorney General's Office, respondent*