

**KESEGOFETSE DIKATHOLO**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 17 AUGUST 2006

*S S Mlaudzi*, for applicant  
*T Mkwanzani, with Dube*, for the respondent

Bail Pending Appeal

**NDOU J:** The applicant seeks bail pending appeal against both conviction and sentence. The salient facts are that the applicant was convicted by a Regional Magistrate of fraud in that he received from the complainant BP110 000,00 after misrepresentation to him that he was selling a Mercedes Benz motor vehicle when in truth he had no such a vehicle. He was sentenced to seven (7) years imprisonment of which 2 years was suspended on conditions of good behaviour and restitution. After sentence the applicant made an unsuccessful application for bail. He now appeals against the Regional Magistrate's refusal to grant him bail pending appeal. In such an application the approach is whether the Regional Magistrate misdirected herself when refusing the applicant bail pending appeal. In other words, the appeal should be directed at the Regional Magistrate's judgment and finding in the bail application – *S v Malunjwa* HB-34-03.

This issue was raised as a point *in limine* by Mr *Mkwanzani*, for the respondent. The applicant seeks my indulgence in this regard. Looking at the body of the application, it is clear that the applicant does not attack the Regional Magistrate's findings in the bail application. Instead, he directed his appeal against

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the Regional Magistrate's alleged mis-directions in respect of the conviction and the sentence. I would have considered the indulgence sought if I had the record of proceedings of the bail application before the Regional Magistrate. I, unfortunately, do not have such proceedings.

In the circumstances, it is not possible for me to make findings on whether the regional Magistrate mis-directed herself when refusing the applicant bail pending appeal.

Accordingly, I strike the application from the roll.

*Samp Mlaudzi & Partners*, applicant's legal practitioners

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