

**SONNY KUZOMUNHU CHASI**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
KAMOCHA J  
BULAWAYO 15 OCTOBER 2009

*R Ndlovu* for applicant  
*E Moyo* for respondent

Application for bail pending appeal

**KAMOCHA J:** After hearing arguments from both counsel I delivered an *ex tempore* judgment and dismissed the application. My reasons for so doing are these.

The applicant was charged with the crime of fraud to which he pleaded not guilty in the Regional Magistrate Court but was nevertheless found guilty despite his protestation. He was sentenced to undergo 7 years imprisonment of which 2 years imprisonment was suspended on the customary conditions of future good behavior. Aggrieved by both the conviction and sentence he filed an appeal with this court and now seeks to be admitted to bail pending the appeal.

A look at the applicant's grounds of appeal reveals that his main complaint was that the court *a quo* had made a fatal error by not commencing the trial *de novo* after the public prosecutor had recused himself and another prosecutor had taken over and continued with the proceedings. This ground of appeal is devoid of any merit. There is nothing wrong with a new prosecutor taking over and continuing with the proceedings to finality.

The second ground of appeal was that the complainant was aware of the cancellation of the agreement of sale to Chipfunde. The evidence on that issue was that of the applicant against that of the complainant. Having listened to both of them the trial court preferred the story of the complainant to that of the applicant. The trial court seems to have evaluated their evidence based on their demeanour when arriving at its decision. That finding cannot be easily interfered with by an appeal court.

It seems to me, therefore, that applicant's prospects of success on appeal against conviction are non-existent.

Judgment No. HB 20/10  
Case No. HCA 91/09  
CRB 34/08

As against sentence Mr Ndlovu appearing for the applicant did not have any meaningful submissions to make. Rightly so, because the sentence was in fact appropriate. The crime of fraud carries a sentence of up to 35 years.

In the light of the above the application was dismissed.

*R Ndlovu & Company*, applicant's legal practitioners  
*Attorney-General's Office*, respondent's legal practitioners