

**SAMANTHA MASHIRI**

**VERSUS**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
CHEDA J  
BULAWAYO 15 AUGUST 2011 AND 15 SEPTEMBER 2011

*Mr T Muganyi* for appellant  
*Mr W. Mabhaudi* for respondent

Bail Appeal

**CHEDA J:** This is an appeal against the decision of the magistrate court sitting in Filabusi wherein appellant's application for bail pending trial was denied.

On the 16<sup>th</sup> August 2011 both counsel appeared before me. I dismissed the application and undertook to give my reasons later. These are they. Respondent was not opposed to this application, but, I ordered that both counsel should appear to argue which they did.

The background and facts of this matter as outline in the summary of the state case are that appellant, a 31 year old woman was employed by Debshan company, (complainant) as a company secretary . Between the 10<sup>th</sup> December 2010 and 30 June 2011, she, on fourteen occasions stole a total of \$14000-00 from her employer. She devised a method of adding \$1000-00 on each and every requisition made by one Majid Omar, who was employed as a workshop manager. It is through this method that she creamed-off a total of \$14000-00 from the complainant.

On the 4<sup>th</sup> August 2011 she appeared at the magistrate court and applied for bail which was denied hence this application.

Appellant through her legal practitioner has attached the magistrate's decision on the basis that the magistrate did not consider that she is not a flight risk since she is a Zimbabwean, a responsible family woman and that there are no chances of her interfering with state

witnesses as she will be based in Harare, a place far away from where the offence was committed.

It is trite that the courts arguably favour the liberty of an individual as the principle of the presumption of innocence until proven guilty by a competent court prevails in on judicial system.

The determination of that liberty can only be justified where liberation is most likely to result in the defeat of the smooth running of the wheels of the proper administration of justice.

In casu appellant was caught with her hands fully immersed in the cookie jar. This practice had been going on for 7 months without detection. I note with interest that her legal practitioner in his wisdom has not attempted to say anything about her attitude towards this offence. This in my view is a reflection of avoiding fighting against the obvious. This, however, is not to say, she is guilty, but, however, goes to demonstrate her full knowledge of how deeply immersed in the criminal murky waters she is.

The seriousness of the offence and the prospect of imprisonment in the event of a conviction is, therefore, enough impetus for the appellant to abscond if given a chance to do so. This chance can not present itself more clearly than her admittance to bail.

Respondent has supported this application on the basis that the magistrate did not give reasons for his refusal to grant her bail and that she is unlikely to abscond. In as much as the magistrate failed to give reasons which according to the state are not good enough or something of that nature, the obvious reason is that she is unlikely to stand trial if released on bail.

I therefore, hold the view that to grant her bail under those circumstances is to easily facilitate her flight, which I am not prepared to do.

These are the reasons.

*Masawi and partners*, appellants, legal practitioners  
*Criminal Division, Attorney General's office*, respondent's legal practitioners