

EDGAR MDONGO

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
CHEDA AJ
BULAWAYO 22 & 31 JANUARY 2013

D. Mhiribidi for the applicant
Ms A. Munyeriwa for the respondent

Bail Application

CHEDA AJ: This is an application for bail pending appeal by an accused person who was convicted for fraud as defined in section 136 of the Criminal law (Codification and Reform) Act [Chapter 9:23], and sentenced to 5 years imprisonment of which 3 years were suspended on condition he makes restitution to Mpilo Hospital in the sum of R200 000 through the Clerk of Court, Bulawayo.

The applicant has noted an appeal against both conviction and sentence. The applicant is employed by the Ministry of Health as a Chief Medical Equipment Technician at Mpilo Hospital.

He is alleged to have inflated a quotation of R48 000,00 to read R248 000,00 prejudicing Mpilo Hospital in the sum of R200 000,00. He was charged together with another person who was acquitted.

In his application for bail pending appeal he says he is suitable for bail as he is of fixed abode, is 45 years old and married and while he was on remand he observed each and every day of the remand date and reporting conditions. He has nothing that can induce him to abscond. Applicant says he has prospects of success in that central to the crime of fraud is the element of prejudice which was not proved in this case. He said everything that was done concerning the tender in question was captured by the Secretary of the tender Committee in the form of hand written minutes. He said if the minutes were produced they would exonerate him and that the tender that was won was based on the lowest quotation based on the wrong specification of the equipment ordered. The correct equipment was subsequently quoted at R248 000,00. He said the minutes would show that the hospital did not suffer any prejudice and that he did not make any misrepresentation.

However, the minutes concerned were not produced by the prosecution despite his raising of the issue.

Both witnesses, Regina Moyo and the auditor conceded that the minutes were crucial as the best evidence on the issue, but the minutes were not produced. The auditor was adamant that the minutes be made available to determine what happened, but they were not made available.

Another witnesses also confirmed that the equipment that was actually ordered and delivered was the larger one that costs R248 000,00 and not the smaller one which had been quoted at R48 000,00.

Miss *Munyeriwa*, for the respondent conceded that the minutes should have been made available.

The applicant submitted that on that ground he has good prospects of success on appeal. I agree.

The applicant was clearly deprived of the availability of evidence that could have possibly exonerated him.

The application for bail pending appeal succeeds.

1. The applicant is granted bail in the sum of \$100,00 to be deposited with the Assistant Registrar of High Court, Bulawayo.
2. The applicant is ordered to continue to reside at number 72313 Lobengula West, Bulawayo until the finalization of this matter.

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