

NDUBEKO  
MUZAMBA versus THE  
STATE

IN THE HIGH COURT OF ZIMBABWE  
TAKUVA J  
BULAWAYO, 7 June 2022 & 5 October 2023

Bail Application

P. D. Sibanda, for the applicant  
Ms N Ngwenya, for the respondent

TAKUVA J: This is an application for bail pending trial made in terms of s 115 (C) 2 (a), 116 and 117 of the Criminal Procedure and Evidence Act [Chapter 9:07] as read with Rule 90 of the High Court Rules, 2021. The applicant seeks the following relief;

That the application for bail be granted on the following terms;

- (a) that he deposits an amount of ZWL\$10 000-00 with the Registrar of the High Court as security for the recognisance.
- (b) that applicant resides at house number 1736 New Magwegwe, Bulawayo until the matter is finalised.
- (c) that he reports once every Friday between 6.00 am and 6.00 pm at ZRP Magwegwe until the matter is finalised.

FACTS

The applicant is facing a charge of contravening s 60 A (3) (a) (b) of the Electricity Act [Chapter 13:19] (Tempers, cut, damage, destroy or interferes with any apparatus used in

connection with generation, transmission, distribution or supply of Electricity. The precise allegations being,

Count one: That on the 27<sup>th</sup> of April 2022 and at house No. 57546/2 New Lobengula Bulawayo, applicant unlawfully and intentionally cut with a pliers a strand of overhead copper conductor from a pole measuring 100 m and weighing 16, 750 kg, material used in connection with generation, transmission, distribution, or supply of electricity, contrary to the said Act.

Count two: In that on the 25<sup>th</sup> day of April 2022 and at house No. 72223 Lobengula West Bulawayo, applicant unlawfully and intentionally cut with a pliers 300 m of ZETDC overhead copper conductor from a pole, material used in connection with transmission, distribution, or supply of electricity, contrary to the said Act.

In Count I the State further alleged that the applicant was observed on top of a ZETDC pole holding a pliers and subsequently arrested him and recovered 100 m of copper conductors and the pliers. In count two, it is alleged applicant entered the yard at house No. 72223 and proceeded to a ZETDC pole inside the yard, climbed it and cut two strands of overhead copper conductors measuring 300 metres and went away unnoticed. The offence came to light on 27 April 2022 upon applicant's arrest at house No. 57546/2 New Lobengula Bulawayo.

The State alleged that the applicant confessed and freely and voluntarily led detectives to the indications.

In his bail statement the applicant outlined his defence in the following manner;

1. He was arrested by citizens on the 27<sup>th</sup> April 2022, at about 0300 hours in New Lobengula suburb Bulawayo.
2. He was coming from seeing his girlfriend Mozi Ncube who stays at 57752/2 New Lobengula when he heard a loud explosion that was followed by darkness as electricity went out.
3. Applicant heard a male voice shouting from behind saying 'G isela' meaning thief and he ran for safety.

4. He ran towards a durawall with a view to climb and escape but the members of the public caught up with him and arrested him after assaulting him.
5. The police assaulted him further forcing him to confess to stealing cables on the 24<sup>th</sup> April 2022 in Lobengula. Out of pain he confessed to the allegations in count two.
6. Finally, applicant averred that he was arrested for being in that place at a time electricity went out after a loud explosion and that his presence was merely coincidental.

The application is opposed by the State on the basis that applicant is not a good candidate for bail for the following reasons;

- (a) the applicant is facing a very serious charge of which upon conviction calls for a lengthy prison term of up to 10 years. He is therefore motivated to abscond if granted bail. See *S v Jongwe* SC 62-02.
- (b) there is a strong prima facie case against the applicant in that at the time of arrest, he was found within the vicinity of the crime scene and there is an eye witness who actually saw the applicant on top of the ZETDC pole in possession of a pliers. The stolen cables were also recovered at the scene. The applicant had fled from the scene but was arrested after a chase. According to the state, the applicant was caught *in flagrante delicto*.
- (c) the applicant's alibi that he was visiting his girlfriend is a lie as shown by Merjury Muleya who attested that there is no such person who resides at that residence — See affidavit attached.

## THE LAW

The law relating to bail is a well beaten path in our jurisdiction. The starting point is s 50(1)(d) of the Constitution of Zimbabwe, 2013 which provides that any person who is arrested must be released unconditionally or on reasonable conditions, pending a charge or trial, unless there are compelling reasons justifying their continued detention.

Section 117 (2) of the Criminal Procedure and Evidence Act [Chapter 9:07] provides the following as compelling reasons;

- (i) where there is a likelihood that if released on bail, an accused person would endanger the safety of the public or any particular person or that he would commit an offence referred to in the first schedule,
- (ii) where there is a likelihood that the accused person will not stand his or her trial or appear to receive sentence,
- (iii) where there is a likelihood that the accused person will attempt to influence or intimidate witnesses or to conceal or destroy evidence.
- (iv) where there is a likelihood that the accused person will undermine or jeopardise the objectives of proper functioning of the criminal justice system, including the bail system,
- (v) in exceptional circumstances where there is a likelihood that the release of the accused person will result in the disturbance of public peace or security.

#### APPLICATION OF THE LAW TO THE FACTS

In my view if released on bail, the applicant will not stand trial. I am not satisfied by the applicant's assurance that he will stand trial. The paramount principle is to uphold the interests of justice. I find that in light of the bright prospects of a conviction and upon that conviction, the imposition of a long term of imprisonment, the temptation for applicant to abscond if granted bail is irresistible. The fact that witnesses do not say they saw him on top of an electricity pole is neither here nor there as what is crucial in my view is that the applicant was observed at the scene at 0300 hours holding a pliers and damaged copper cables were nearby.

I also find that the applicant's explanation for being in the area at that time to be false. His alleged girlfriend is not known at that address. Assuming the girlfriend was a frequent visitor who had visited on that day, the witness would have said so. Applicant is likely to abscond since he escaped from the scene and had to be arrested after residence gave chase. For these reasons, applicant is not a good candidate for bail.

The applicant is not a good candidate for bail. There are compelling reasons for denying applicant bail.

In the a•es t, the application for bail pending trial is dismissed.

Ncube and Partners, applicant's legal practitioners

National Prosecuting Authority, respondent's legal practitioners

