Judgment No. HB 32/06
Case No. HBA 15/06

**LISBEN BVOVONGWE**

**versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 17 MARCH 2006 AND 6 APRIL 2006

*Mr Chivaura*, for applicant
*Mr K Amon* for respondent

Bail pending sentence

**Ndou J:** The applicant was employed at Negondo Industries Stock Controller at Bulawayo when these offences were allegedly committed. The allegations are that between 8 December 2003 and 14 June 2004, the applicant defrauded his employer on twelve (12) occasions and prejudicing same a total of 230 million dollars.

The applicant was convicted on 5 May 2005. The matter was referred to the High Court for sentence. I, however, did not see the record of the proceedings in this matter as it was being transcribed. In terms of Section 226 ( c) (ii) of the Criminal Procedure and Evidence Act, Chapter (9:07) the record of proceedings shall be executed "forthwith" to the Registrar of the High Court. This is further buttressed by Section 227 (1) which obliges the Registrar of the High Court to proceed with "convenient speed" to place the record before a Judge. The record has still not been transcribed and due to numerous

logistic hurdles within the state machinery there is no specific time in which to expect the



transcription. The accused is now a convicted person. The presumption of innocence falls away.

The onus is on the applicant to show that he should be admitted granted bail pending sentence, and in the absence of positive grounds for granting bail, it should be refused. Like in an application for bail pending appeal, the factors to be considered in this application are the following:_

a) The likelihood of the accused absconding in light of the sentence likely to imposed.
b) The likelihood of the conviction being set aside before sentence-Section 227, *supra*
c) The right of individual liberty, and
d) The like delay before the appeal is heard – *S –vs- Ncube* and another HB 4-03 *S v Manyange* HH 1-03, *S v Poshai* HH 89-03; *S v Kilpin* 1978 RLR 282 at 286; *Badze v S* SC 75-90; *S v Tengende* and others 1981 ZLR 445 (5), *S v Williams* 1980 ZLR 466 (A) at 468 and *S v Benatar* 1985 (2) ZLR 205 (H)

In this case the applicant was on bail pending trial and did not default. Furthermore, he came on his own accord from home after for his judgement going through the entire trial. It was only after conviction that he was put in custody as is requisite at law.

Although I did not go through the record of proceedings Mr Amon, for Respondent did so. I assume Mr Chivaura did the same. Mr Amon gave a fairly detailed summary of the testimony given by each witness. Mr Chivaura did not challenge the correctness of the said summary. Looking at the said summary it seems to me that the applicant was unassailably guilty of the offences charged, and such finding is beyond any

meaningful challenge *Badze v S Supra* at page 4. In the circumstances, it would be wrong for the applicant to be at large when he should properly be in *gaol – S v Kilpin*,



*supra* at 286. I have taken this robust approach of relying on the respondent's unchallenged summary of evidence in order to dispose of this bail application expeditiously rather than wait for the transcription of the record. The applicant has failed to show positive grounds for his admission to bail. I, however, by copy of judgment, urge that the Chief Magistrate to look into this serious issue which is fast taking root in our criminal justice system occasioned by scarcity of transcription resources. The records where the accused persons have been transferred to the High Court for sentence need to be transcribed as a matter of urgency. The same applies to criminal appeal records as the people concerned are in most cases in prison awaiting determination by the superior courts.

In the circumstances of this case I dismiss the application and bail pending sentence is refused.

*Dube and Partners*, Applicant's Legal Practitioners
*Criminal Division, Attorney General's Office,* Respondent's Legal Practitioners