PETER CHIKUMBA
versus
THE STATE

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 4, 8 & 9 September 2015

Bail pending appeal

Adv. T. Mpofu, with him *Adv. S. Hashiti,* for the applicant, instructed by *A. Rubaya*
I. Muchini, for the respondent

MAFUSIRE J: This was a second application for bail pending appeal by the applicant in a space of two months. The first had been dismissed by TAGU J on 8 July 2015. So, on this second occasion, the applicant, naturally, had to show "changed circumstances" as envisaged by proviso (ii) to s 123(1)(b)(ii) of the Criminal Procedure and Evidence Act, [*Cap 9:07*] ("***the CP & E Act***"). That provision, in my own words, permits the admission to bail, of a person convicted and sentenced by a magistrate's court, and whose appeal is pending before this court, provided that where his application has previously been determined, he can only come back on new facts which would not have been considered in the previous application by reason of those facts having arisen, or having been discovered, after the determination of the previous application.

The facts were these.

(a) <u>Charge, conviction and sentence</u>

The applicant, and one Grace Nyaradzayi Pfumbidzayi (hereafter referred to as "***Pfumbidzayi***" or "***the applicant's co-accused***"), were jointly charged in the magistrate's court for criminal abuse of duty **<u>as public officers</u>** whilst they were still employed by Air Zimbabwe Holdings (Private) Limited (hereafter referred to as "***Air Zimbabwe Holdings***" or "***the airline***"). They were accused of having procured insurance brokerage services from a certain insurance broking firm, Navistar Insurance Brokers (Private) Limited ("***Navistar***"),

without having gone to tender or without affording other insurance companies the chance to bid for those services, allegedly in contravention of s 174(1)(a) of the Criminal Law (Codification and Reform) Act, *Cap 9:23* ("***the Criminal Code*** or "***Code***"). That section reads, with potions highlighted by myself:

> "**174 Criminal abuse of duty as <u>public officer</u>**
>
> (1) If a **<u>public officer</u>**, in the exercise of his or her functions as such, intentionally-
> (a) does anything that is contrary to or inconsistent with his or her duty as a **<u>public officer</u>**; or
> (b) ……
> for the purpose of **<u>showing favour</u>** or disfavour to any person, he or she shall be guilty of criminal abuse of duty as a **<u>public officer</u>** and liable to a fine not exceeding level thirteen or imprisonment for [a] period not exceeding fifteen years or both" (my underlining)

The applicant and his co-accused were also charged with an alternative offence, namely that of having procured the aforesaid insurance services from Navistar without having sought the approval of the State Procurement Board, allegedly in contravention of s 30 of the Procurement Act, *Cap 22:14*, as read with s 5(4)(a)(2) and s 35 of the Procurement Regulations, SI 171 of 2002.

The charges against the applicant and his co-accused were being preferred some five years or so after the incident giving rise to them, and some years after the applicant had since left the employ of the airline. At the time he had been the Group Chief Executive Officer. Pfumbidzayi had been the Company Secretary and Legal Manager.

The applicant and his co-accused pleaded not guilty to both charges. After a full trial, they were convicted of the main charge, and acquitted of the alternative one. They were sentenced to ten years imprisonment of which three years were suspended. Currently they are serving.

(b) <u>Appeal</u>

The applicant appealed to this court against both conviction and sentence. The appeal is still pending. It is long winded and convoluted. But in substance, it attacks the findings of the court *a quo*. Among other things, the applicant criticises the trial magistrate for having based her conviction on the evidence of, *inter alia*, Pfumbidzayi, which, he said, was not

credible. Of one of the other witnesses for the State, Charles Nyakabau, the applicant brands him in his notice of appeal as just a hired gun.

On the sentence, the applicant criticises the court *a quo* for patent mis-directions by, among other things, failing to appreciate that the penal section under which they had been convicted provided for both custodial and non-custodial sentences and that, as such, the court ought to have seriously considered the non-custodial option. The court is also criticised for having failed to give due weight to the mitigating features, such as that the applicant was a first offender who was a suitable candidate for community service.

Thus, on appeal, the applicant seeks the wholesale setting aside of the conviction, or, in the alternative, the reduction of the sentence to two years imprisonment, with one year conditionally suspended, and the other commuted to community service.

(c) First bail application pending appeal

Two months after his conviction and sentence, the applicant filed his first bail application. The learned judge found no prospects of success of the appeal and dismissed it. He also considered that the applicant could abscond. On the propriety of the sentence imposed by the trial court, the learned judge noted that it might have been on the higher side, but that it did not induce such a sense of shock as to warrant interference by the appeal court. He also considered that even if the sentence was to be reduced on appeal, it was inevitable that a custodial portion would still remain, given the gravity of the offence.

(d) Second bail application pending appeal

This second bail application before me is based on alleged changed circumstances. The applicant is saying, in my own words, and as I understood counsel's submission, he was ***not*** a public officer. He should never have been charged with the offence of contravention of s 174(1)(a) of the Criminal Code. Air Zimbabwe was none of those entities envisaged by the Criminal Code. His conviction is a nullity. This aspect was completely overlooked by both the prosecution and the defence. It was overlooked in the first bail application. It has never been addressed at any stage before. It is an aspect that was recently discovered by counsel on being briefed to give advice on the way forward after the dismissal of the first bail application. It is also a legal point. It goes to the root of the validity of the conviction. It brings a completely different complexion to the whole issue of applicant's prospects of

success on appeal. The applicant has filed a notice of amendment to his previous grounds of appeal to incorporate this new point.

In a nutshell, that was the applicant's argument before me.

In response, the State at first took a technical objection and steered clear of the merits. In substance, the objection was that no changed circumstances exist. It argued that what the applicant had purported to do by filing the amended grounds of appeal was to bring in extraneous issues that had never been considered before. It was not a mere amendment, but a wholesome addition to the old notice of appeal. This was in violation of the Supreme Court (Magistrates Courts) (Criminal Appeals) Rules, 1979, (SI 504 of 1979).

The State also argued that the fact that the applicant was a public officer had never been put in issue, either at the trial, or in the first bail application. It is not an issue in the only notice of appeal that is properly before the court. The applicant is indeed a public officer. Air Zimbabwe is indeed a State company.

I interrupted the State counsel on the argument about Air Zimbabwe being a State company. He was straying into the merits of the case about which he had, at that stage, not filed any proper response.

After argument I dismissed the State's preliminary objection and called for argument on the merits. My reasons for dismissing the preliminary objection by the State appear below.

(e) <u>Changed circumstances</u>

The most elementary enquiry pertaining to the charge with which the applicant faced was whether he was a **<u>public officer</u>** as envisaged by s 174(1)(a) of the Criminal Code. Corollary to that, was Air Zimbabwe Holdings such an entity as envisaged in the Code?

The applicant says in his application, it was only when counsel had been briefed to give advice on the way forward that it was discovered that he was wrongly convicted. Thus the nub of the preliminary objection by the State was whether the discovery by counsel of the supposed anomaly constituted changed circumstances, and whether the notice of amendment of the grounds of appeal by the applicant was proper.

I was satisfied that the discovery, even at that late stage, that the applicant may not have been a public officer, and therefore may have been wrongly charged and wrongly convicted, constituted changed circumstances.

The actual wording of the CP & E Act on the point, with portions underlined by myself for emphasis, reads:

"**123 Power to admit to bail pending appeal or review**

(1) Subject to this section, a person may be admitted to bail or have his conditions of bail altered–

(a) ……...

(i) ……..

(ii) ……..

(b) in the case of a person who has been convicted and sentenced by a magistrate's court and who applies for bail-

(i) …….

(ii) pending the determination by the High Court of his appeal; or

(iii) …….

by a judge of the High Court or by any magistrate within whose area of jurisdiction he is in custody:

Provided that-

(i) ……..

(ii) where an application in terms of this subsection is determined by a judge or magistrate, a further application in terms of this subsection **may only be made**, whether to the judge or magistrate who has determined the previous application or any other judge or magistrate, **if such application is based on facts which were not placed before the judge or magistrate who determined the previous application** and which have arisen **or been discovered after the determination**."

Thus, a subsequent bail application is irregular if it is based on the same set of facts that founded the previous one. It is regular if it is based on facts that had not been placed before the judicial officer in the previous application. Those facts ought to have arisen after the determination of the previous application. Alternatively, they ought to have been **discovered** after the previous application. Mr *Mpofu*, for the applicant, said the fact that the applicant was not a public officer was **discovered** (by himself) after the determination of the previous bail application. As such, he argued, that constituted changed circumstances. Mr *Muchini*, for the State, argued that there was no such discovery. This was a fact that was always in existence right from the beginning. It had never been an issue.

It may be that mere remissness or negligence or lack of diligence in failing to place all relevant facts before the court would not ordinarily amount to new facts, or changed circumstances, where a person, or somebody on his behalf, eventually wisens up to those facts. In my view, if with the exercise of due diligence such facts would have been made

available, the court should not too readily accept them as new facts amounting to changed circumstances.

The test whether in a subsequent bail application there are changed circumstances or not, may be compared to an application for leave to introduce fresh evidence on appeal. The factors to consider should include whether or not the fresh evidence could reasonably lead to a different verdict, and whether there is a reasonable explanation why such facts were not placed before the court. Learned authors LANSDOWN & CAMPBELL in *South African Criminal Law and Procedure*[1] state that[2] in exceptional cases, relief may be granted if the court is satisfied that a reasonable probability exists that a conviction would not stand if the further evidence were accepted. In reference to a violation of constitutional rights in civil proceedings, NGCOBO J, in *Bel Porto School Governing Body v Premier Western Cape*[3] said[4]:

> "It is true, a litigant should not be allowed to litigate in piecemeal fashion. But this right ought not to be allowed to obstruct the course of justice. In my view, the Court should only decline to receive further evidence where it would not be in the interests of justice to do so. The ultimate determinant therefore is the interests of justice."

I associate myself with such sentiments.

In *S v Augustine*[5] the accused had been charged with murder. He had been convicted of culpable homicide. Fresh evidence emerged before sentence was passed. It was to the effect that the person whom the accused had stabbed had not died but was still alive. The trial court had been in error in accepting that the person stabbed to death was the person stabbed by the accused. The fresh evidence was accepted. The case was remitted to the trial court.

In casu, if the applicant was not a public officer, and if Air Zimbabwe Holdings was not one of the entities as envisaged by the Code, then such finding will strike at the heart of the conviction in the court *a quo*.

The consideration of whether or not the discovery, late in the day, of the fact that the applicant may not have been a public officer, or his former employer not the State or a State corporation, was intrinsically linked to the question whether the applicant's amended grounds

[1] Vol. V, Juta & Co Ltd, 1982
[2] At p 646
[3] 2002 (3) SA 265
[4] At para 252
[5] 1980 (1) SA 503 (A)

of appeal were proper. Mr *Muchini* said they were improper because they were not a mere amendment, but rather a completely new ground of appeal. He said to "*amend*" is to make minor improvements to a document or proposal. He argued that what the applicant had purported to do was to make wholesome changes to his original notice of appeal to bring in a completely new ground.

The applicant's amended grounds of appeal, filed of record a day before the second bail application was launched, read as follows:

> "TAKE NOTICE that appellant applies to amend the grounds of appeal contained in the notice and grounds of appeal filed on the 21st of April 2015 ***by adding to the grounds appearing in the said notice***" (underlining by myself).

I find that "*add*" is a synonym of "*amend*". Other synonyms are, "*alter*", "*adjust*", "*modify*", "*revise*", "*change*", "*improve*", "*correct*", etc. The applicant was not substituting a new ground of appeal in place of the old ones as implied by the State. In his application, and throughout the hearing, he stressed that he still stood by his old grounds of appeal and implored the court to reconsider his prospects of success in the light of the additional ground of appeal which he felt lent a different complexion altogether to his situation.

Undoubtedly, if the applicant was bringing a new bail application purely and solely on the same set of facts as those considered previously, that would have been irregular and in violation of s 123 of the CP & E Act. But he was bringing the second bail application on the basis of a new point which, in my view, was both a point of fact and a point of law. He said he had recently **discovered** it. In his view, the new point struck at the propriety of his conviction in the court *a quo*. On that basis, he was urging the court to reconsider his prospects of success anew. I thought he had a point.

In its objection, the State relied on s 6 of the Supreme Court (Magistrates Courts)(Criminal Appeals), Rules. That provision reads:

> "**6. Amendment of notice of appeal**
>
> (1) The Attorney-General or an appellant …. may amend his notice of appeal by lodging a notice in duplicate with the Registrar setting out clearly and specifically the amendment to the grounds of appeal-
>
> (a) in the case of an appeal against conviction or conviction and sentence, as soon as possible and in any event not later than twenty days after the noting of an appeal;

(b) in the case of an appeal against sentence only, as soon as possible and in any event not later than ten days after the noting of the appeal.

(2) A copy of the notice of appeal lodged in terms of subrule (1) shall, at the same time as the lodging of such notice, be served on the other party to the appeal.

(3) An amendment to a notice of appeal in terms of subrule (1) shall not delay the preparation and lodging with the Registrar of the record of the case to which the appeal relates."

Mr *Muchini's* major concern was the potential violation of the time limits as set out in s 6 above. Mr *Mpofu* countered by invoking s 5 of the same Rules. It reads:

"**5. Departure from the rules**

A judge of the Supreme Court or the High Court, or the Supreme Court of (sic) the High Court, may direct a departure from these rules in any way where this is required in the interests of justice, and, additionally or alternatively, may give such directions on matters of practice or procedure as may appear to him to be just and expedient."

I felt I did not have to concern myself too seriously with whether the applicant's amended grounds of appeal were proper or not, or whether I could grant condonation or not. For me, those were aspects for determination by the appeal judges. Before me was a second application for bail pending appeal based on alleged changed circumstances. Before me was an amended ground of appeal incorporating an aspect, recently discovered as a fact or a point of law, which seemed so fundamental to the prospects of success of the applicant's appeal. On examining that new aspect, I found it to be so profound as to strike at the root of the very conviction in respect of which the applicant was serving time.

Section 6 of the appeals regulations does not distinguish between a substantial or wholesome amendment from a minor amendment. Before me, the applicant made out a case of changed circumstances. On that basis, I dismissed the preliminary objection by the State.

The State then sought an adjournment to allow the filing of a proper notice of opposition on the merits. It was granted.

(f) <u>Applicant's prospects of success on appeal</u>

In an application for bail pending appeal, it is not the function of the judicial officer to satisfy himself beyond any measure of doubt whether or not the grounds of appeal are doomed to fail. If the applicant has some fighting chance on appeal, then all the other relevant factors being neutral, the applicant must be entitled to relief.

In casu, counsel for both parties accept the test laid out in *S v Hudson*[6]. The question is not whether the appeal will succeed. The standard is much lower. It is **whether the appeal is free from predictable failure**. If that conclusion is reached, the applicant should be entitled to relief.

In *Shah v Air Zimbabwe Corporation*[7], a judgment of this court by KUDYA J, and *Air Zimbabwe (Private) Limited & Anor v Stephen Nhuta & Ors*[8], a judgment by myself, the finding was that both Air Zimbabwe Holdings and Air Zimbabwe (Private) Limited are private companies formed by shares and registered in terms of the Companies Act, *Cap 24:03*. Air Zimbabwe (Private) Limited was designated as the successor company to the defunct Air Zimbabwe Corporation ("***the Corporation***"). It was the Corporation that was the statutory body. It had been designated as such by the Air Zimbabwe Corporation Act, then *Cap 13:02*. But it unbundled in 1998. Chapter 13:02 was repealed by the Air Zimbabwe Corporation (Repeal) Act, No 4 of 1998. Air Zimbabwe Holdings was formed in 2005.

Briefly, the history of this airline is this. It started off as the Central African Airways Corporation during the days of the Federation of Rhodesia and Nyasaland. In 1968 the name was changed to Air Rhodesia Corporation. It became Air Zimbabwe Rhodesia Corporation during the days of Zimbabwe Rhodesia. After Zimbabwe's independence in 1980 the airline became Air Zimbabwe Corporation. Throughout all these phases, it was a statutory corporation. But that Corporation was dissolved in 1998. Air Zimbabwe (Private) Limited which had been incorporated by shares and registered as a private company in 1997, was nominated as the successor company. In my judgment in the *Nhuta* case above, I held that there was only one successor company, namely Air Zimbabwe (Private) Limited, not Air Zimbabwe ***Holdings***. That judgment was upheld on appeal to the Supreme Court in *Air Zimbabwe (Private) Limited & Anor v Stephen Nhuta & Ors*[9].

In the present case, the State has conceded that Air Zimbabwe Holdings is a private company. The concession is well made. One would think that that would be the end of the matter. It was not. The State has argued further that the applicant was properly found guilty because as Group Chief Executive Officer for Air Zimbabwe Holdings, he was ***de facto*** "*a person holding or acting in a paid office in the service of the State* …." as defined by s 169 of

[6] 1996 (1) SACR 431 (W)
[7] 2010 (2) ZLR 94 (H)
[8] HH 129-13
[9] SC 65/14

the Criminal Code. As such, he was "*a public officer*" within the meaning of s 174(1)(a) of that Code.

The State argued that the situation on the ground was that the State is a major stakeholder in Air Zimbabwe Holdings; that the board that administers its affairs is appointed by the government; that major decisions of the company have to be made in consultation with the line ministry and that the contracts of employment of senior staff have to be approved by the State.

Finally, the State made the point that in certain circumstances the State does run private companies and that employees in such companies are obviously in the service of the State.

In my view, the question who is a public officer, or which types of entities are State bodies for the purposes of s 174(1)(a) of the Criminal Code, was not left to mere conjecture. It is clearly set out. In s 169 the Criminal Code defines "***a public officer***" to mean:

> (a) a Vice-President, Minister or Deputy Minister; or
> (b) a governor ……
> (c) a member of a council, board, committee or other authority which is a statutory body or local authority or which is responsible for administering the affairs or business of a statutory body or local authority; or
> (d) **a person holding or acting in a paid office in the service of the State**, a statutory body or a local authority; or
> (e) a judicial officer;"

The argument by the State is fallacious. It purports to read into the Code words that are not there. The section does not refer to government-controlled entities. It refers to persons holding office in the service of the State. To say the Chief Executive Officer of Air Zimbabwe Holdings, a private company, is the same thing as "*a paid office in the service of the State*" is absurd. The government is merely a shareholder in the airline. It is not the employer. In my view, the person referred to in that section is a civil servant who is employed directly by the State and paid directly by it.

It is true that the State may sometimes run its affairs indirectly through statutory corporations. But the definition of "*public officer*" caters for that. Section 169 defines a "*statutory body*" to mean, among other things, "… *any body corporate established directly by or under an Act for special purposes specified in that Act*". An example that quickly comes to mind is that of the National Social Security Authority which is established by its own Act of

Parliament, namely, the National Social Security Authority Act, *Cap 17:04*. Of course, there are many others. But Air Zimbabwe Holdings is a private company formed by shares and registered in terms of the Companies Act. It is not a statutory corporation. It was not even the successor company to the old corporation which the government consciously and purposefully dismantled in 1998.

Mr *Muchini* argued that because the government has direct shareholding in the airline and literally runs its day to day affairs, it means that any person employed by such an entity must be deemed to be holding or acting in a paid office in the service of the State, within the meaning of s 169(d) of the Criminal Code and s 332 of the Constitution. He argued that the intention behind the creation of the offence in 174(1)(a) of the Criminal Code was to protect **public funds** and **public property** as defined in s 308 of the Constitution. In terms of this section "***public funds***" and "***public property***" include any money, or any property owned, or held by the State, or any institution, or agency of government, statutory bodies **and government-controlled entities** (emphasis by State Counsel). Such a definition, the argument concluded, manifestly covers Air Zimbabwe Holdings.

Such a tortuous construction is unwarranted. The applicant was not charged with any offence whose elements required the importation of definitions from the Constitution. He was charged with contravention of a specific provision of the Criminal Code. That provision is not at all in conflict with any provision of the Constitution. On the contrary, the definition of "*public officer*" in the Constitution, for example, is almost identical to that in the Criminal Code. What is more, the language of the Code is quite plain. It is unambiguous. The ordinary and grammatical meaning is clear. There is no need to resort to aids of construction.

In my view, the applicant was not a public officer. In my view, the appeal court is likely to find that the applicant was wrongly convicted. But if I be wrong on this, the two judges of appeal will correct it. For, now I find that the prospects of the applicant's appeal are "free from predictable failure". If he is not a flight risk, it is in the interests of justice that he be freed on bail pending appeal.

But the State was not finished. Mr *Muchini* argued that even if I find that the applicant was not "*a public officer*" within the meaning of s 174(1)(a) of the Criminal Code as read with s 332 of the Constitution, there is a competent verdict under the same Code which he could have been found guilty of on the same facts as canvassed at the trial. This competent verdict was said to be s 172 of the Criminal Code, the heading of which is "**Corruptly**

concealing a transaction from a principal. In particular, the State was relying on sub-section (1)(b)(ii). In terms thereof it is an offence for any person to assist an agent to carry out any transaction in connection with the affairs or business of the agent's principal, knowing that the agent does not intend to disclose to the principal the full nature of the transaction. Such a person shall be guilty of **corruptly concealing** a transaction from the principal. The penalty is a fine up to, or exceeding, level fourteen, or imprisonment for a period not exceeding twenty years, or both.

It was argued that the evidence established that the applicant and his co-accused awarded the insurance business in question without following the provisions of the Procurement Act and that this was concealed from the board of the airline. It was further argued that s 172 covers a situation where one may not be a public officer.

The alternative argument by the State on the so-called competent verdict is contradictory and unfair to the applicant in several respects. It glosses over an important element of the offence, namely **corruption**. That had not been the State's case in the court *a quo*. The case that the applicant faced in the court *a quo* was that he had **shown favour** to Navistar in the awarding of the insurance business without going to tender, allegedly thereby depriving other competitors the same chance. That is hardly the same thing as saying he was being **corrupt**. There was no suggestion, let alone any evidence of corruption led.

Mr *Muchini* argued that once there was evidence of concealment, then a presumption operated that the concealment had been in the furtherance of the corruption. For support, he referred to s 17 as read with s 13 of the Criminal Code. But in my view, this was a long and desperate shot. None of these provisions are relevant. Section 17 says that where the word "***corruptly***", among others, is used with respect to the commission of a crime, then s 13 shall apply to the determination of the state of mind of the person accused of committing that crime. One then goes to s 13. Its heading is "**Intention**". It says where intention is an element of any crime, the test is subjective. It is whether or not the person whose conduct is in issue intended to engage in the conduct or to produce the consequences he or she did. Sub-section (2) says motive is immaterial to intention, except in those situations provided for by the Code.

With respect, there is nothing new in s 17 and s 13 of the Criminal Code. That has always been the state of our law, even before codification. The Code does not say that where concealment is proved, corruption is presumed and that the onus then shifts to the accused

person. I do not think that the appeal court is likely to find that the applicant **corruptly concealed** any transaction from anyone. I do not think that it is likely to find that s 172 of the Criminal Code was a competent verdict, or that the facts in the court *a quo*, disclosed a contravention of s 172.

Furthermore, the applicant was acquitted of the alternative charge of contravening the Procurement Act that governs the procurement of goods and services by permission of the Procurement Board. Thus, even under this alternative argument by the State, the applicant has, in my view, more than a fighting chance on appeal.

(g) Risk of absconding

In the previous application for bail pending appeal the applicant was adjudged to be a flight risk. But given that with the new ground of appeal, the conviction is likely to be set aside on appeal, I see no inducement for him to abscond. On the contrary, it seems reasonable to assume he will want to go through the appeal process and be vindicated. He is 60 years old. He is a man of substance. He is said to have at one time or other made international connections. But he makes the point that he is now too old to run away and re-invent himself in another country. At any rate, the State conceded that the argument that he has international connections was mere conjecture. The record discloses no such fact. The allegation was based on the mere fact that he was once the Chief Executive Officer of an airline that flies to international destinations and that therefore he must be assumed to have made international connections! With respect, we are courts of justice.

The applicant was said to be the head of a Christian ministry at the time of his incarceration. He owns real estate in this country. His roots are here. Taking all the factors into account, I see no grave risk of him skipping bail that may not be mitigated by stringent conditions.

In the circumstances, I find the applicant a suitable candidate for bail pending appeal.

DISPOSITION

It is hereby ordered as follows:

1. The applicant shall be admitted to bail pending appeal.
2. The following shall be the conditions attaching to the applicant's admission to bail:

2.1 The applicant shall deposit with the Clerk of Court at Harare Magistrate's Court bail in the sum of two thousand dollars (USD2 000-00);

2.2 The applicant shall surrender the title deeds for the property known as Stand 17135 Harare Township of Salisbury Township situate in the District of Salisbury, otherwise known as No. 2 Zebra Close, Borrowdale West, Harare;

2.3 The applicant shall surrender all his travel documents to the Clerk of Court at Harare Magistrate's Court.

2.4 The applicant shall continue to reside at No. 2 Zebra Close, Borrowdale West, Harare until his appeal is finalised.

2.5 The applicant shall report at Borrowdale Police Station every Friday of the week between the hours of 6:00 hours and 18:00 hours.

9 September 2015

Rubaya & Chatambudza, applicant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners