

**THE ATTORNEY GENERAL'S OFFICE**

**Versus**

**TAPIWA PRISCILA HILARY TAPEDZA**

**And**

**MS GLORIA TAKUNDWA (N.O.)**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 19 & 21 DECEMBER 2012

*T. Makoni* for the appellant

*E. Chatambudza* for the defendant

Bail Application

**MAKONESE J:** The Attorney General (the appellant) has noted an appeal in this matter in terms of section 121 (1) of the Criminal Procedure and Evidence Act (Chapter 9:07) against the decision by the 2<sup>nd</sup> respondent to grant 1<sup>st</sup> respondent bail, whilst sitting at Beitbridge Magistrates' Court on the 1<sup>st</sup> of November 2012.

The allegations against the 1<sup>st</sup> respondent are briefly that on the 20<sup>th</sup> October 2012 the 1<sup>st</sup> respondent hatched a plan to steal money and misrepresented to one Wellington Chibaya that she could exchange rand currency into United States dollar currency at a favourable rate. The complainant collected various sums of money from different persons totaling R224 100,00 and handed it to the 1<sup>st</sup> respondent who promised to exchange the money for United States dollars. The 1<sup>st</sup> respondent is alleged to have disappeared with the money. She converted R55 700 for US\$6 400 and gave the US dollars to Lovemore Chipwanya whom she instructed to deposit the said amount in a Barclays Bank account belonging to R. Taruvinga. The 1<sup>st</sup> respondent then hired a taxi and sent the taxi driver with R35 900 to give to her mother. The 1<sup>st</sup> respondent took the remainder of the cash and crossed the border into the Republic of South Africa. Police detectives received information that the 1<sup>st</sup> respondent was at a flat in Musina in South Africa where she was hiding. The Zimbabwe Republic Police passed information to the South African Police Service requesting them to check for 1<sup>st</sup> respondent at the address she was suspected to be residing. With the assistance of South African Police detectives 1<sup>st</sup> respondent was located and brought to the Beitbridge Border Post where she was handed to Zimbabwean Police detectives. 1<sup>st</sup> respondent was arrested and when searched she was found to have a total sum of R80 600,00 in a brown handbag.

1<sup>st</sup> respondent appeared before the 2<sup>nd</sup> respondent facing a charge of fraud involving R224 100 and was granted bail on these conditions:

- (a) Bail deposit \$500
- (b) Order to report 3 times a week on Monday, Wednesday and Friday between 6am and 6pm at Beitbridge Police Station
- (c) Order to reside at the given address until the matter is finalised
- (d) Order not to interfere with state witnesses.

The appellant being unsatisfied with the decision of the 2<sup>nd</sup> respondent appealed against the granting of bail on the following grounds:-

- “1) The magistrate erred at law and factually by not giving due and sufficient consideration to the fact that 1<sup>st</sup> respondent had travelled outside the country without proper documentation. Her return was due to deportation. This evidence goes to the heart of abscondment and is positive proof that reporting conditions are not appropriate.
- 2) The magistrate erred by not giving due consideration to the evidence that the 1<sup>st</sup> respondent has pending cases in Harare and Chinhoyi of a similar nature. In both instances the investigating officer put forward that the 1<sup>st</sup> respondent was absconding.
- 3) The court erred in granting 1<sup>st</sup> respondent bail when there was clearly an unresolved dispute between the state and defence on the 1<sup>st</sup> respondent actual physical address.
- 4) The magistrate erred by disregarding the evidence that some of the money defrauded by 1<sup>st</sup> respondent had already been disposed of by 1<sup>st</sup> respondent. Various sums of money had been deposited into unknown accounts. Therefore the magistrate ought to have appreciated that 1<sup>st</sup> respondent would interfere with evidence.
- 5) The ruling of the magistrate is not based on any facts or evidence led during the bail hearing. No reasoning is advanced as to how the magistrate came to the conclusion that 1<sup>st</sup> respondent was a suitable candidate for bail. The absence of such reasoning is a clear misdirection”.

I invited counsel for the state and the defence to make further submissions in chambers on the 20<sup>th</sup> December 2012. Mr *T. Makoni* who appeared for the state chose to stand by his written submissions. Mr *E. Chatambuka* for the 1<sup>st</sup> respondent strongly argued that the magistrate was correct in granting bail with reporting conditions. He went on to concede that in spite of the failure by the magistrate to give clear reasons for granting 1<sup>st</sup> respondent bail this was a case where the circumstances of the case were such that 1<sup>st</sup> respondent was a suitable candidate for bail. I must say that Mr *E. Chatambuka* struggled, in his submissions to proffer any sensible defence to the allegations against the 1<sup>st</sup> respondent. It seems evident that the state has a strong case against the 1<sup>st</sup> respondent. It is also quite clear that the 1<sup>st</sup> respondent fled to South Africa without any documentation and was arrested by South African Police who

deported her back to Zimbabwe. There can be no denying that 1<sup>st</sup> respondent is a flight risk and has already shown that she can move into South Africa without any travel documents. The possibility of abscondment is therefore very high and it is not safe to grant her bail pending trial. 1<sup>st</sup> respondent has not disputed that she is facing similar cases in Harare and Chinhoyi. A substantial amount of money has not been accounted for by 1<sup>st</sup> respondent.

It is settled law that the primary consideration is whether the 1<sup>st</sup> respondent will stand trial or abscond if admitted to bail – section 117 (3) of the Criminal Procedure and Evidence Act (Chapter 9:07) and *S v Ndlovu* 2001 (2) ZLR 261 (H).

I am satisfied that 1<sup>st</sup> respondent is not a good candidate for bail and I therefore uphold the appeal by the appellant and order as follows:

1. The decision by 2<sup>nd</sup> respondent of the 1<sup>st</sup> of November 2012 admitting 1<sup>st</sup> respondent to bail is hereby quashed and set aside.

*Criminal Division of the Attorney General's Office, appellant's legal practitioners*  
*Nyamushaya, Kasuso & Rubaya c/o Cheda & Partners, 1<sup>st</sup> respondent's legal practitioners*