

PIKIRAI JOHANNES  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
TSANGA J  
HARARE, 5, 7, & 13 August 2014

### **Bail pending trial**

Applicant in person  
*A Masamha*, for respondent

TSANGA J: This is an application for bail pending trial where accused is facing allegations of contravening s 136 of the Code which relates to fraud. The charges arise from the purported sale of stands to various members of the public whereby he advertised through his company High Serve Properties (Private Limited) such stands as being available for purchase. The annexure to the charge sheet shows that at least eight people were prejudiced as a result of the applicant's alleged fraudulent activities.

The State opposed bail on the grounds that the applicant has shown a propensity to commit similar crimes that were indicated in the Investigation Officer's sworn affidavit. In the report he was said to have been convicted under **CRB 9820/2013**, and **CRB 402 /2013**. He was also said to have cases pending under **CRBs 448/2013; 7754/2013** and **9820/13**. He was in addition, also said to be currently on a trial involving fraud in the Magistrates Court under **CRB 1050/2014**.

The applicant having denied knowledge of the matters stated when the bail application was heard on the 5<sup>th</sup> of August 2014 State Counsel requested to seek further particulars in order for a proper determination to be made. The bail application was thus heard again on the 7<sup>th</sup> of August where state counsel reported its findings. These were reported as follows:

1. The applicant was convicted under **CRB 402/13** and is serving after he failed to pay restitution.
2. He was also convicted under **CRB 9820/13**.

3. **CRB 1050/14** is pending trial and his trial date is 8/8/14.
4. **CRB 7754/2013** he was found not guilty and acquitted.
5. **CRB 7605** and **CRB 2768/14** were joined and he is going for trial on 15 August 2014.
6. There are also pending cases ready for trial by way of summons **CR 848/12/13** and **CR 1678/2/14** under which he was acquitted. The rest of the matters were said to be intact.

In **CRB 9820/13** it was indicated that he had defaulted and that a default inquiry was yet to be instituted. In **CRB4 02/2013** he was said to be currently serving.

The applicant conceded the existence of these matters pointing out that some arose whilst he was already in custody. He claimed however, that he had finished serving his term under **CRB 402/13**. With regards to the other pending matters, his view was that he can only be granted a fair trial if he is granted bail to secure documentary evidence in these cases. He also highlighted that his release and efforts at getting the necessary documentation would serve the purpose of weakening the State case against him. He also stated that some of the matters were more civil than criminal. He further averred that his continued incarceration would result in a public outcry from those affected and that his availability at his workplace would restore confidence among his clients and in the justice delivery system. He also expressed the view that far from being the accused, he should in fact be the complainant against his clients who have defaulted in terms of their agreements. The applicant was also of the view that the properties were sold by a company and that he should not be held personally responsible. Suffice it to mention that the corporate veil can be and is lifted where a company is set up for fraudulent activities.

The basic principles to be considered in deciding bail pending trial in terms of s 117 (2) of the Criminal Procedure and Evidence Act [*Cap 9:07*] are essentially whether or not the accused person will endanger the safety of the public; whether or not he is likely to stand his trial or appear to receive sentence; whether or not he will intimidate witnesses or conceal or destroy evidence; and whether or not he will undermine or jeopardise the objectives or proper functioning of the criminal justice system including the bail system.

The applicant is indeed facing multiple counts and as such the risk of absconding is very high as he seems to be a serial fraudster. The likelihood of interfering with witnesses is

also there in light of the fact that applicant is of the view that it is the witnesses who owe him money. Furthermore these are also cases of fraud where the evidence can be concealed or destroyed. As stated in *S v Ncube* HB 27/03 the question is not that of whether he may interfere but rather whether he will interfere. In my view, he will interfere.

With regards to the possibility of committing other offences this seems to be very likely and is substantiated the by evidence from the number of cases he is facing and some for which he has already been convicted of as well as those that have since cropped up. This is indeed a case where the irresistible inference is that of a very high possibility of committing similar offences by an unrepentant offender. It is my further view that the unsuspecting public will indeed be protected from the refusal of bail in this matter. It would be an abuse of the bail process to permit bail under these circumstances.

The application for bail pending trial is accordingly dismissed.

*National Prosecuting Authority*, respondent's legal practitioners