

ISHMAEL CHIKUPO
versus
THE STATE

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 11 April 2014 and 14 April 2014

Bail application

E. Chatambudza, for the applicant
Mrs *S. Fero*, for the respondent

TAGU J: This is an application for bail pending appeal against conviction and sentence. The applicant was arraigned before the court sitting at Murewa for contravening s 114 (2) (a) of the Criminal law (Codification and Reform) Act [*Cap 9:23*] - stock theft. He is alleged to have stolen a stray beast.

The applicant was legally represented during the proceedings. He was sentenced to the minimum mandatory sentence of 9 years after the court *a quo* ruled that there were no special circumstances. He is now attacking the procedural aspect of the case, more particularly he is now alleging that it was his defence counsel who tendered a plea of guilty on his behalf and that the court erred in ruling that there were no special circumstances.

I was referred to two important cases of *S v Nyandoro* 1987 (2) ZLR 66 SC @ 67E-F and *S v Machokoto* 1996 (2) ZLR 190 (H).

The counsel for the respondent is not opposing the application.

However, having perused the record as well as the cited cases I do not agree with the submissions by both counsels as far as the issue of conviction is concerned. There was no misdirection on the part of the court *a quo* and it is not true that it was the defence counsel who tendered a plea of guilty on behalf of the accused. It was the accused himself who tendered the plea of guilty and the defence counsel confirmed that the plea was in accordance with his instructions. The lawyer proceeded to tell the court that he had explained all the essential elements of the offence to the accused and asked the court to enter a verdict of guilty. There was

therefore nothing untoward in that procedure. Therefore there are no prospects of success on appeal against conviction.

However, the two cases that I cited above are distinguishable from the present case. Be that as it may on the issue of special circumstances this normally involves a value judgment by the court seized with the matter. A different court may come out with a different view.

The applicant therefore may have some prospects of success against sentence only. On that basis the application for bail pending appeal will be allowed.

Application for bail pending appeal is granted in terms of the draft order.

Rubaya & Chatambudza, applicant's legal practitioners
Criminal Division, Prosecutor - General's Office, respondent's legal practitioners