

IN THE COURT OF APPEAL OF ZAMBIA  
HOLDEN AT LUSAKA  
(Criminal Jurisdiction)

CAZ/9/11/12/13/14/15/16/18

BETWEEN:

LOVENESS NYAMBE  
PRISCAR NYAMBE  
ESTHER TEMBO  
PAMELA NYAMBE  
OSIYA CHINDALA  
BILLINGS NYAMBE



1<sup>st</sup> APPLICANT  
2<sup>nd</sup> APPLICANT  
3<sup>rd</sup> APPLICANT  
4<sup>th</sup> APPLICANT  
5<sup>th</sup> APPLICANT  
6<sup>th</sup> APPLICANT

AND

THE PEOPLE

RESPONDENT

*Before the Honorable Mr. Justice C.F.R. Mchenga on 28<sup>th</sup> March 2018.*

*For the Applicants: Z. Muya, Muya & Company*

*For the Respondent: C. K. Sakala, State Advocate, National Prosecution Authority*

---

## R U L I N G

---

Legislation referred to:

1. **The Court of Appeal Act, Act No. 7 of 2016**
2. **The Penal Code, Chapter 87 of the Laws of Zambia**
3. **The Criminal Procedure Code, Chapter 88 of the Laws of Zambia**

This is an application for bail pending appeal made pursuant to the provisions of **Section 18(1) of the Court of Appeal Act**. The applicants originally appeared before the Subordinate Court jointly charged with the offences of Arson and Malicious Damage to property, contrary to **Sections 328 and 335 of the Penal Code**. They all denied the charges and the matter proceeded to trial. At the end of that trial, they

were all convicted and sentenced to terms of imprisonment. They have since appealed against the convictions and their appeals are pending before the High Court.

After lodging their appeals to the High Court, the applicants also applied for bail pending the hearing of their appeals in that court. Their applications for bail were not successful and hence these applications. The applications are supported by an affidavit jointly deposed by all the applicants. The respondent opposes the applications and an affidavit has been deposed to that effect.

On behalf of the applicants, Mr. Muya has submitted that his clients are entitled to being admitted to bail pending the hearing of their appeals by the High Court because they have demonstrated that the appeals are likely to succeed and they are able to provide independent sureties. On the other hand, it is Mr. Sakala's position that bail should not be granted because the applicants have not demonstrated that there are exceptional circumstances warranting their admission to bail.

In my view, the issue that these applications raise is one of jurisdiction. Does the Court of Appeal have the jurisdiction to hear an application for bail pending appeal at this point?

**Section 18 (1) of the Court of Appeal Act**, the provision pursuant to which these applications have been made, provides that:

"Where the High Court has, in exercise of its powers under section *three hundred and thirty six* of the Criminal Procedure Code, refused to admit an appellant to bail or to postpone the payment of a fine imposed on that appellant, the Court may, if it so considers, on the application of the appellant, and pending the determination of the appeal or the application of leave to appeal, to the Court in a criminal matter-

- (a) admit the appellant to bail or, if not, on application by the appellant, direct that the appellant be treated as an unconvicted prisoner pending the determination of the appeal or application for leave to appeal, as the case may be; and
- (b) postpone the payment of the fine imposed on the appellant"

In the case of **Section 336 (1) of the Criminal Procedure Code**, it provides as follows:

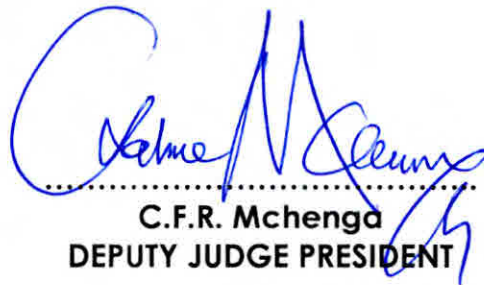
"The High Court may, if it deems fit, on the application of an appellant from a judgment of that Court and pending the determination of his appeal or application for leave to appeal to the Supreme Court in a criminal matter-

- (a) admit the appellant to bail, or if it does not so admit him, direct him to be treated as an unconvicted prisoner pending the determination of his appeal or of his application for leave to appeal, as the case may be; and
- (b) postpone the payment of any fine imposed upon him."

When assessed, these two provisions provide that the Court of Appeal will only have the jurisdiction to hear a bail application in cases where there is an appeal pending before it. In other words, the application is only competent where the High Court has passed its judgment and the applicant has appealed against it. The other condition the applicant must meet is, the application should have filed an application for bail in the High Court and such application was declined.

In this case, though the High Court has heard the applicants and declined to grant them bail, the bail applications were in connection with an appeal pending before that court and not the Court of Appeal. There is no appeal pending before this court because the High Court has, in fact, not even heard the applicants' appeals to it.

Since there is no appeal pending before this court, I find that these applications are premature and incompetent. Consequently, they are dismissed for want of jurisdiction.

  
C.F.R. Mchenga  
DEPUTY JUDGE PRESIDENT