

**IN THE HIGH COURT FOR ZAMBIA  
HOLDEN AT LUSAKA**  
*(Criminal Jurisdiction)*

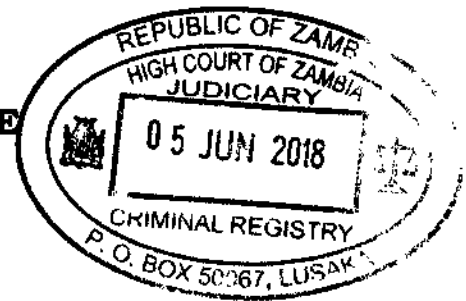
**HPA/14/2018**

**BETWEEN:**

**MUUKA NIXSON  
RICHARD SINKONDE**

**VS**

**THE PEOPLE**



**BEFORE HONORABLE MR. JUSTICE MWILA CHITABO, SC**

*For the Applicant: Mr. J. Mulongo with Mr. A. Kalikiti of Messrs  
MSK Advocates*

*For the People: Ms R. Malibata – State Advocate National  
Prosecutions Authority*

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**RULING ON BAIL PENDING APPEAL**

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**Legislation**

*1. Criminal Procedure Code Chapter 88 of the Laws of Zambia*

**Cases referred**

- 1. Krishnan v. The People (SCZ 19 of 2011) ZM SC (21 October, 2011)*
- 2. SODDART v. The Queen [No.1] NRL 1949 – 1951 at p288*

This is an application for bail pending appeal anchored on Section 332 (1) of the Criminal Procedure Code1.

It is supported by an affidavit deposed to by the Applicant himself. The essence of which is that having appealed against the Judgment of the High Court dated 3<sup>rd</sup> May, 2018 upholding the 2 year imprisonment sentence, he was of the view that there were good prospects for him succeeding in his appeal. Further that, if granted bail he would abide by the bail conditions having done so in the past.

In his further affidavit in support of the bail application, the applicant's further ground is that, but not granted, by the time his appeal is heard, he would have served the whole or a substantial portion of his sentence.

The application was opposed by the People of Zambia in affidavit deposed to by the Learned Ms. R. Malibata. The gravamen of which is that there are no prospects of the appeal succeeding. That with the Court of Appeal operational the appeal is likely to be dealt with expediently.

Further, that the mere promise that Applicant will abide by bail conditions is no ground for granting bail pending appeal. It was finally deposed that the Applicant has failed to demonstrate that exceptional circumstances exist to entitle him to bail pending appeal.

At the hearing of the application, the Learned Mr. J. Mulongo opted to rely and adopt the supporting affidavits of the application which he augmented with crisp submissions. The essence of which was

that bail denied, the Applicant will suffer irreparable damage in the event that the appeal was to succeed.

It was his submission that the appeal has prospects of succeeding. Ms Malibata countered the submissions. It was her submission that the State (The People of Zambia) firmly opposed the application. It was her submission that there are no prospects of the appeal succeeding. She placed her reliance on her skeleton arguments. It was her submission that for the application to succeed he had to demonstrate that (1) there are prospects of the appeal succeeding, and (2) that the sentence is so short that by the time the appeal is determined the Applicant would have served the whole or a substantial portion of his sentence.

In support of this legal proposition, Counsel invited the Court to take cognisance of the cases of ***Krishnan v. the People<sup>1</sup>*** and ***SODDART v. the Queen<sup>2</sup>***. According to her the Court of Appeal being in place, there are no prospects of undue delay in disposing of the appeal.

As regards the prospects of succeeding, it was her submission that there are in fact no such prospects going by the evidence on record. She accordingly beseeched the Court to dismiss the application for want of merit.

I am indebted to both Counsel for their helpful submissions. I have read the affidavits for an against the grant of the bail. I have also

previewed my Judgment and I have considered the submissions of the Learned Counsel.

It is trite law and it is common cause that ordinarily bail pending appeal can only be anchored on 2 special circumstances. Firstly, that the sentence is so short that by the time the appeal is heard, the applicant would have saved the whole or a substantial portion of the sentence. Secondly, that there are prospects of the appeal succeeding.

In respect of the first consideration, I agree with the Learned Ms Malibata that with the operationalisation of the superior Court of Appeal, there are no legitimate fears that the appeal will take unduly long. This is so because High Court proceedings are electronically captured and the same produced by the efficient Court recorders. There is therefore no reason for Court proceedings to be unduly delayed. It is the duty of the Applicants Advocates to ensure that the record of appeal is swiftly constituted and forwarded to the appellate Court.

I find no merit in the applicants first ground.

In respect of the second limb, it was argued that there are prospects of succeeding. It has not been demonstrated how such result would be reached at. I have observed in one of the preceding paragraphs that I have previewed the Judgment and prospects of succeeding of the appeal.

The Judgment has given the reasoning upon which the Court came to the only irresistible conclusion that the conviction was richly anchored. There does not exist any ground to persuade me to depart from my Judgment.

In any event, if I were to say at this stage that I entertain very good prospects or that there are prospects of the appeal succeeding, then in the first place, I shouldn't have upheld the conviction.

The Applicant has fallen far too short of demonstrating prospects of succeeding on appeal.

I therefore come to the conclusion that this is not a fit and proper case to admit the Applicant to bail pending appeal. The Applicants application therefore is desolute of any merit. It is dismissed.

Leave to appeal granted.

**Dated this 5<sup>th</sup> day of June, 2018**



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**Mwila Chitabo, SC**

**Judge**