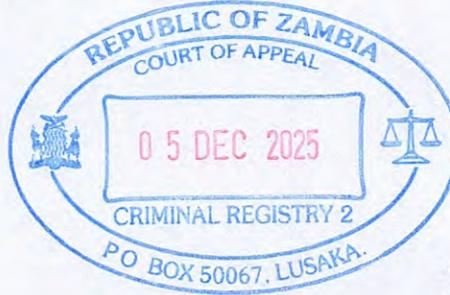


IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT LUSAKA
(Criminal Jurisdiction)

CAZ/09/127/2025

BETWEEN:

PHILEMON DYAMINI



APPLICANT

AND

THE PEOPLE

RESPONDENT

Before the Honourable Mr. Justice C.F.R. Mchenga
On 1st December, 3rd December and 5th December 2025

For the Applicant: M. Nkunika, ZS Legal Practitioners
For the Respondent: V. Choongo, State Advocate, National
Prosecution Authority

RULING

Legislation Referred to:

1. The Road Traffic Act No. 11 of 2002

Cases Referred to:

1. Stoddart v. The Queen (No.1), NRLR [1949-1951] 288
2. Anuj Kumar Rathi Krishnan v. The People [2011] 3 Z.R. 1
3. Aggie Zimba v. The People, CAZ Appeal No. 243/2020
4. Clarke v. Shepard [1965] R&N 542

1.0 BACKGROUND

- 1.1. The applicant appeared before the Subordinate Court, charged with the offences of Dangerous Driving, contrary to **Section 155(1) of the Road Traffic Act**, and Failure to Present a Motor

Vehicle for Change of Ownership, contrary to **Section 10(7) of the Road Traffic Act.**

- 1.2. He was convicted by that court following his admission of both charges.
- 1.3. The applicant was sentenced to 18 months simple imprisonment for dangerous driving, and fined K30,000, for the failure to present a motor vehicle for change of ownership.
- 1.4. He appealed against both sentences.
- 1.5. The High Court upheld the sentence for the dangerous driving but set aside the sentence for the failure to present a motor vehicle for change of ownership. The fine of K30,000 was substituted with a fine of K15,000.
- 1.6. The court also granted the applicant leave to appeal to this court.
- 1.7. The applicant has since appealed against the sentences imposed on him for the two offence. He contends that a custodial sentence should not have been imposed for the dangerous driving, and that the fine of K15,000, for the failure to present a motor vehicle for change of ownership, was excessive.
- 1.8. Following the filling of the appeal, the applicant approached the

High Court for bail and the postponement of the payment of the fine, pending the hearing of his appeal.

1.9. The High Court declined to grant both applications, and hence their renewal before this court.

2.0 CONSIDERATION OF THE APPLICATION

2.1 At the hearing of this application, in addition to relying on the affidavits and skeleton arguments that they had filed, both parties also made oral submissions. The facts deposed to in the said affidavits, have been taken into account. I have also taken into account, both the oral and written submissions by the parties.

2.2 It is settled law, that bail pending appeal will only be granted where there are exceptional circumstances.

2.3 In the cases of **Stoddart v. The Queen**¹ and **Anuj Kumar Rathi v. The People**², the likelihood of an appeal succeeding, and the likelihood of an appellant serving a substantial portion of the sentence, by the time the appeal is heard, were identified as facts pointing to exceptional circumstances, when an application for bail pending appeal, is being considered.

2.4 In this case, prior to applying for bail and the postponement of

the payment of the fine, pending the hearing of his appeal, the applicant was granted leave to appeal.

- 2.5** In the case of **Aggie Zimba v. The People**³, adopting the position taken in the case of **Clarke v. Shepard**⁴, we pointed out that where the High Court is of the view that there are prospects of an appeal succeeding, leave to appeal to the Court of Appeal, can be granted.
- 2.6** In this case, it is my understanding that the High Court granted the applicant leave to appeal to this court, because there were prospects of his appeal succeeding.
- 2.7** Since the appeal is only against the sentence, it is my view that it would be inconsistent to deny the applicant bail or not to postpone the payment of the fine, pending the hearing of the appeal, when he has been granted leave to appeal the sentences.
- 2.8** This is because the yardstick for the grant of leave to appeal to the Court of Appeal, and the benchmark for the grant of bail pending appeal, are the same; there being prospects of the appeal succeeding.
- 2.9** In the circumstances, I find that this is an appropriate case in

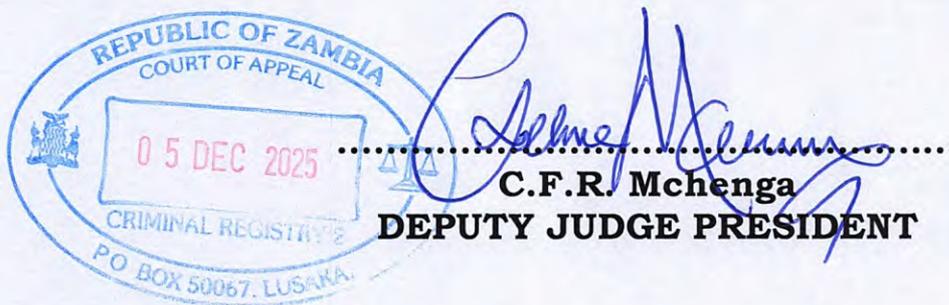
which the discretion to grant bail must be exercised in favour of the applicant.

2.10 Accordingly, I will grant the applicant bail pending appeal because there are prospects of the appeal succeeding and it is likely that he will serve a substantial portion of the sentence, by the time the appeal is heard, if he is not granted bail.

2.11 The bail is granted on the following conditions:

- (i) K15,000 on the applicants own recognisance; and
- (ii) two working sureties, who will each be bound in the sum of K15,000, in their own recognisance.

2.12 I also postpone the payment of the fine pending the hearing of the appeal.


C.F.R. Mchenga
DEPUTY JUDGE PRESIDENT