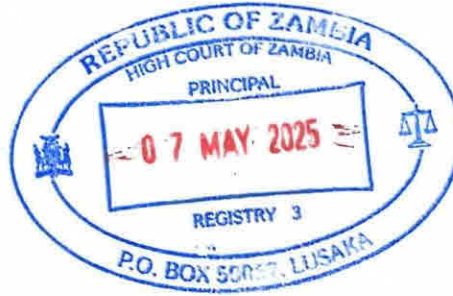


D.

**IN THE HIGH COURT FOR ZAMBIA  
HOLDEN AT LUSAKA  
(CRIMINAL JURISDICTION)**

**HPBA/10/2025**



**BETWEEN:**

**RAPHIAS CHIWALA**

**APPLICANT**

**VS**

**THE PEOPLE**

**RESPONDENT**

**Before the Honourable Mrs. Justice R. Chibbabbuka on the 7<sup>th</sup> day of May, 2025**

For the Applicant: Messrs Legal Aid Board  
For the Respondent: National Prosecutions Authority

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## **RULING**

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### **Legislation referred to:**

*The Penal Code, Chapter 87 of the Laws of Zambia*  
*The Criminal Procedure Code, Chapter 88 of the Laws of Zambia.*

### **1.0 INTRODUCTION**

The applicant stands charged with theft by servant contrary to *Section 272 and 278* of the *Penal Code, Chapter 87 of the Laws of Zambia*. Pending the trial of this matter, the applicant applied for bail which was denied by the lower court. He has since renewed his application before this court by filing summons for bail pending trial pursuant to *Section 123 (3) of the Criminal Procedure Code, Chapter 88 of the Laws of Zambia*. The summons was filed on 11<sup>th</sup> February, 2025.

### **2.0 The Applicant's Affidavit in Support**

The applicant has deposed to an affidavit wherein he swears that he is currently remanded at the Lusaka Correctional Facility and currently appearing before the

Subordinate Court in Lusaka for trial on the charge of theft by servant. The offence he is charged with is bailable. On 11<sup>th</sup> December, 2024 he applied for bail pending trial before the trial magistrate but the same was denied on the ground that he had evaded arrest when in actual fact he was arrested from home.

His address is as stated in the affidavit in support of this application, which is house number 146/46 Garden House, Lusaka. He will be staying with his surety at the stated address. He will attend court whenever he is required to and he is not a flight risk. He is of fixed abode with traceable sureties. He will not interfere with witnesses if granted bail.

### **2.1 The Applicant's Skeleton Arguments**

The Applicant filed skeleton arguments on 11<sup>th</sup> February, 2025 wherein counsel argued that *Section 123 (3) of the Criminal Procedure Code, Chapter 88 of the Laws of Zambia* gives the court discretion to grant bail pending trial. That the applicant herein has satisfied the elements required to be granted bail pending trial thereby bringing this matter within the jurisdiction of this court. That this is a proper case in which this court should exercise its discretion to grant an order of bail pending trial.

### **4.0 At the Hearing**

This matter was scheduled for hearing on 13<sup>th</sup> March, 2025 but it could not be heard as a learner legal practitioner, who possess no audience before this court, attended to the hearing on behalf of the applicant. The respondent was not in attendance and has not filed any opposition despite notices of hearing being issued to it. This matter was adjourned to the 7<sup>th</sup> May, 2025 but the applicant's counsel and the respondent were not in attendance. I proceeded to render a ruling based on the filed documents.

### **5.0 Decision of the Court**

I am indebted for the arguments which I have carefully considered.

The applicant's application is made pursuant to *Section 123 (3) of the Criminal Procedure Code*, which provides that:

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*“The High Court may, at any time, on the application of an accused person, order him, whether or not he has been committed for trial, to be admitted to bail or released on his own recognizance, and the bail bond in any such case, may, if the order so desires, be executed before any magistrate.”*

Premised on the above, the High Court is clothed with the jurisdiction to grant an accused person bail pending trial. The applicant is charged with a bailable offence and there being no opposition on record from the respondent as to why the applicant should be denied bail, I accordingly grant the applicant bail pending trial on the following conditions:

1. The applicant is granted bail at K10,000.00 in his own recognizance with two traceable working sureties in the like sum.
2. The verification of the sureties to be strictly followed through by the clerk of court.
3. The applicant should surrender his passport and/or any travel documents in his possession as the case may be to the Clerk of court.
4. The conditions of the bail and consequences of breach to be explained to the applicant and sureties.

Dated the ..... day of ..... 2025.

