

**IN THE HIGH COURT FOR ZAMBIA
AT THE DISTRICT REGISTRY
HOLDEN AT KABWE**
(Criminal Jurisdiction)

HBA/06/2022

BETWEEN:

DANIEL MAPULANGA

AND

THE PEOPLE



APPLICANT

RESPONDANT

***Before the Hon. Mrs. Justice M.M. Bah-Matandala
On the 6th December, 2024***

For the Applicant: Mr. S. Mulele- Messrs. Chris and Partners

For the Respondent: Mr. V. Choongo- State Advocate Messrs. National Prosecution

Authority

R U L I N G

Legislation Referred:

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

Cases Referred:

1. *Joseph Watton 1979 CR APP 293*
2. *Anuj Kumar Rathi Krishnan V People SCZ No 19 of 2011*
3. *Stoddart v The Queen [No 1] N.R.L. (1949-1951) 288.*
4. *Titus Zulu Mike Musanya Sambundu v The People (2010) 1 ZR 450.*

1.0 Introduction

1.1 This is a ruling on the Applicant's application for bail pending appeal. The application is made pursuant to **Section 321(1) of the Criminal Procedure Code Chapter 88 of the Laws of Zambia**. The application is supported by an affidavit deposed to by the Applicant, and also

accompanied by a list of authorities and skeleton arguments.

2.0 Background

- 2.1 The background is that the Applicant herein was charged together with two others, with two counts of the offence of **Abuse of Authority of Office Contrary to Section 99 (1) of the Penal Code Chapter 87 of the Laws of Zambia.**
- 2.2 In a Judgment of the Subordinate Court dated 22nd October, 2020, the learned trial Magistrate found the Applicant guilty of the offence of Abuse of Authority of Office, contrary to Section 99 (1) of the Penal Code and sentenced him to five months simple imprisonment.
- 2.3 On appeal, the conviction and sentence were upheld by this Court. The Applicant is now appealing to the Court of Appeal and has made this application for bail pending appeal.

3.0 The Applicant's Affidavit in Support

- 3.1 The Applicant deposed to the Affidavit dated 29th October 2024. He deposed that the offence that he had been charged with was a bailable one and that during the course of the appeal in this Court he had been on bail.
- 3.2 In addition, the Applicant deposed that he was of fixed abode, was capable of providing working sureties and

believes that his appeal would succeed in the Court of Appeal.

3.3 Furthermore, the Applicant averred that his continued stay in prison may be fatal and injurious as he would have served a substantial part of the sentence by the time the appeal is heard.

3.4 The Applicant further averred that not granting him the application would make him suffer prejudice, while the State would not suffer prejudice if the application was granted.

4.0 The Applicant's Arguments

4.1 Learned counsel for the Applicant filed skeleton arguments and list of authorities dated 29th October, 2024.

4.2 It was contended that the case of **Stoddart v The Queen** was instructive and good law on bail pending appeal, as it was thus held in that case:

“A convicted prisoner should not be released on bail pending appeal unless exceptional circumstances are disclosed.”

- 4.3 The case of **Joseph Watton** was referred to regarding special circumstances in which to grant the application. The considerations being that where it appears, prima facie, that the appeal is likely to succeed, or; where there is a risk that the sentence will be served by the time the appeal is heard.
- 4.4 In relation to the Respondent's case, there is no affidavit in opposition filed on 15th November, 2024 as directed. And since learned counsel for both sides had agreed for the Court to proceed to determine the application on the basis of the filed documents on record, I have proceeded to render this ruling herein.

5.0 Analysis and Determination

- 5.1 Having considered the Applicant's arguments and the documents on record, I have to determine whether the Applicant is entitled to bail pending appeal.
- 5.2 ***Bail pending appeal is provided for under Section 332 (1) of the Criminal procedure Code, Chapter 88 of the Laws of Zambia*** which reads as follows:

“After the entering of an appeal by a person entitled to appeal, the appellate court, or the subordinate court which convicted or sentenced

such person, may, for reasons to be recorded by it in writing, order that he be released on bail with or without sureties, or if such person is not released on bail shall, at the request of such person, order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal.”

5.3 This provision has clothed the Court with the discretion to grant bail pending appeal. Therefore, this application is competently before me.

5.4 In the case of **Titus Zulu, Mike Musanya Sambundu v The People**, it was stated that:

“Unlike bail pending trial, bail pending appeal is granted with reserve because the applicant is a convicted person and the conviction is good unless and until an appellate court quashes the conviction. It is for this reason that different considerations apply in applications for bail pending appeal.”

5.5 Therefore, for the bail pending appeal to be granted, the Court must be satisfied that there are exceptional

circumstances disclosed in the application. That was the holding in **Stoddart v The Queen**, which has already been cited in the application.

- 5.6 Further, in the case of **Anuj Kumar Rathi Krishman v The People**, the Supreme Court held inter alia that:

“It is important to bear in mind that an application for bail pending appeal, the Court is dealing with a convict, and sufficient reasons must therefore exist before such a convict can be released on bail pending appeal.”

- 5.7 In the present case, the Applicant has stated that he is of fixed abode, is able to provide sureties and was on bail during the course of the appeal in this Court. However, when determining applications of this nature, considering the cited authorities, I am of the considered view that these are not exceptional reasons to warrant this court to grant bail pending appeal.

- 5.8 In addition, the Applicant submitted that he believed that the appeal would succeed. However, having previewed the grounds of appeal, it is noteworthy that they are essentially the same grounds that were advanced in this Court after the

conviction in the Subordinate Court. Therefore, what I see is a good conviction and there are no good chances of success on appeal.

5.7 Further, I have paid attention to the guidance of the Supreme Court as per **Anuj Kumar Rath Krishman v The People** where it was stated that in dealing with an application for bail pending appeal, the Court is dealing with a convict and sufficient reasons must therefore exist before such a convict can be released on bail pending appeal.

5.8 The Applicant furthermore has contended that he would have served a substantial portion of his sentence by the time his appeal would be heard. It is by considered view that this too does not qualify as an exceptional circumstance as per the authorities cited for the reason that the Court of Appeal has been disposing off criminal matters within a reasonable time. It is therefore unlikely that the Applicant will serve a substantial part of his sentence before his appeal is heard.

6.0 Conclusion

6.1 For the reasons stated above, I find that there are no exceptional circumstances to warrant the grant of bail

pending appeal. I find no merit in this application and accordingly dismiss it.

Dated at Lusaka, this 6th December, 2024.


M.M.BAH-MATANDALA
HIGH COURT JUDGE.

