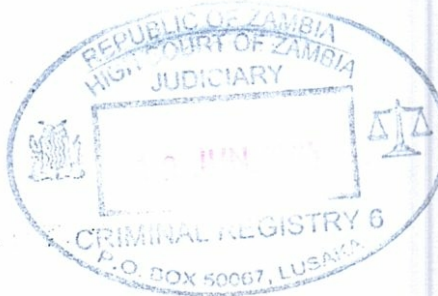


THE HIGH COURT FOR ZAMBIA  
AT THE DISTRICT REGISTRY  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)

HPBA/17/2024

BETWEEN:

**SAUL SHABONGWE**



**PLAINTIFF**

AND

**THE PEOPLE**

**RESPONDENT**

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**RULING**

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**Cases referred to:**

1. *Stoddard Vs The Queen* NRLR 288
2. *Kumar Rathi Krshnan Vs The People* SCZ No 19 of 2011
3. *The People Vs Yousuf Pandor* (2010) 2 ZR

**Legislation referred to:**

1. *Criminal Procedure Code Chapter 88 of Laws of Zambia*
2. *Zambia Wildlife Act No 14 of 2015*

## **1. Introduction**

**1.1.** This ruling is in respect of the Applicant's summons for bail pending appeal. The Applicant moved this Court under section 332 of the Criminal Procedure Code, following refusal or denial by the Subordinate Court sitting at Lusaka, to admit the Applicant to bail pending appeal.

## **2. Background**

**2.1.** The background to this matter as gleaned from the pleadings is that the Applicant was convicted and sentenced to 5 years imprisonment with hard labour by the Subordinate Court of the First Class in the Lusaka District for the offences of unlawful possession of a protected trophy contrary to Section 130(1) of the Zambia Wildlife Act No 14 of 2015.

## **3. Affidavit Evidence**

- 3.1.** The Applicant avers that being unsatisfied with his conviction he on 19<sup>th</sup> April, 2024 lodged a Notice of intention to Appeal against the said conviction raising six grounds of Appeal.
- 3.2.** The Applicant further avers that the Subordinate Court refused his application for bail pending appeal.
- 3.3.** The Applicant further avers that the offence he stands convicted of is bailable, he is of fixed abode and has a meritorious appeal.
- 3.4.** The Applicant avers that he would have served a substantial part of his sentence by the time his appeal is heard.

- 3.5. The Applicant further avers that he is willing and able to meet the bail conditions that will be imposed by the Court.
- 3.6. The application is opposed by the Respondent who in the affidavit in opposition, avers inter alia that the Applicant's reasons advanced for the application are not cogent enough for this Court to grant bail pending appeal as no exceptional circumstances have been shown.
- 3.7. The Respondent further avers that the Respondent is more likely to suffer prejudice in effective prosecution of the matter, if the application is granted.
- 3.8. The Respondent avers that the Applicant has not demonstrated that by the time his appeal is heard he would have served a substantial portion of his sentence.
- 3.9. The Applicant in his affidavit in reply avers that he has demonstrated his chances of success at appeal and that the lower Court takes a long time to prepare record of Appeal and he may have served substantial portion of his sentence by the time his appeal is heard.

#### **4. The Law/Submission**

- 4.1. The parties filed skeleton arguments and list of authorities of which I am grateful.
- 4.2. I shall not reproduce the arguments as they are on record. The Applicant relied on and cited authorities in the cases ***Stoddard Vs Queen NRLR 288, Kumar Rathi Krishnan V the people SCZ No.19***

*of 2011* and *The People V Yousuf Pandor (2010) 2 ZR*, pointing to fact that this Court is clothed with power to grant bail pending appeal where exceptional or unusual circumstances exist. Also where a party has shown high chances of success at appeal.

- 4.3. On the other hand, the Respondent submits that the Notice of intention to appeal does not automatically entitle the Applicant to bail pending appeal. Also that as per the authority case of *Stoddard Vs The Queen*, this Court ought to exercise its discretion judiciously as the Applicant is a convict and not an accused person.

#### **5. Court's Decision**

- 5.1. I have had chance and occasion to review and consider the application before me. I have considered the Applicants grounds of appeal particularly so grounds 2 -6. In ground two the Applicant seeks to challenge the lower Court's finding that the Applicant was found with a Pangolin when the Pangolin was found in a Motor Vehicle that had no link whatsoever to the Applicant.
- 5.2. I opine that the grounds of appeal as shown by the Applicant raises likelihood of success at appeal.
- 5.3. I am further convinced that there is a high chance /possibility that the Applicant would have served a substantial part of the 5 years sentence by time the appeal is heard, given the case load at the Subordinate Courts.

5.4. I find that the Applicant's application has merit and has shown exceptional circumstances warranting the grant of bail.

**6. Conclusion**

6.1. I hereby grant the application for bail pending appeal and set the following conditions:

6.1.1. The Applicant is admitted to bail at Kwacha Twenty Thousand only (K20,000) in his own recognizance with two (02) traceable working sureties in the sum of Kwacha Ten Thousand (K10,000.00) each in their own recognisance.

6.1.2. The verification of the sureties will be done by this Court.

6.1.3. The Applicant shall surrender his passport, if any and or any such travel documents in his possession, to the Registrar of the High Court.

6.2. The Applicant is warned of consequences of breach of any of the conditions so set.

Dated:



**Hon. Lady Justice. S. Chocho**  
**HIGH COURT JUDGE**

