

ABEDNICO BHEBHE AND 37 OTHERS

versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE

KAMOCHA J

BULAWAYO 12 FEBRUARY 2002

Appeal Against Refusal of Bail

*J Tshuma* with him *N Mathonsi* for the appellants  
*Mrs M Cheda* for the respondent

KAMOCHA J: The first and second appellants are members of Parliament for Nkayi and Hwange West Constituencies respectively. The third to the 38th appellants are all members of the Movement for Democratic Change “MDC” a registered political party in Zimbabwe. They were all arrested on 6 February 2002 at Nkayi. They appeared before the magistrates court at Nkayi on 8 February 2002 and were all denied bail by the presiding magistrate. They appealed against that refusal to grant them bail. After hearing arguments from both counsel I granted all the appellants bail in the following terms and indicated that my reason would follow in due course.

“It is ordered that appellants be and are hereby admitted to bail on the following conditions:

- (a) That they each deposit a sum of \$1 000,00 with the Registrar of the High Court of Bulawayo.
- (b) That they do not interfere with state witnesses.”

The State’s allegations against all the appellants appear on a document commonly known as “Request for Remand” form. They are alleged, firstly, to have contravened s 17(1)(a) and (b) of the Public Order and Security Act [*Chapter 11:17*] “the Act”. Secondly, they were charged with contravening s 30(1)(2) (*sic*) of the Act. This charge does not make sense as it stands since s 30(1) of the Act is a definition section. I think what was intended was s 30(2) of the Act.

The brief circumstances given by the state were that on 6 February 2002 at Nkayi Business Centre the 38 appellants who were all members of the Movement for Democratic Change travelling together in a motorcade of vehicles registration numbers 772-052L, 772-564Y and 772-830G acted in concert and threw stones at Nkayi Business Centre and also had in their possession in vehicles they were travelling in, offensive weapons, that is to say, stones, axes, knobkerries, empty bottles, knives and others (*sic*).

All the appellants are denying the charges. Their side of the story goes like this. On the day in question they were peacefully minding their own business in the Nkayi area. They stopped at the Nkayi Business Centre to fuel their vehicles when members of the Zimbabwe National Army in the company of the war veterans approached them and deflated the wheels of their motor vehicles by shooting them.

They went on to severely assault all the appellants and badly injured all of them. The appellants were taken to Nkayi Police Station where their captors continued with the brutal assaults with rifle butts, knobkerries,

sjamboks and planks. They were made to crawl on their stomachs for a distance of about 20 metres while singing ZANU(PF) slogans.

The appellants sustained serious life-threatening injuries of varying degrees. The first appellant, for instance, had a gaping wound on the head inflicted with an axe right in front of the police, by a certain war veteran called Ndebele. The first appellant also had severe lacerations all over the body, caused by lashes with a sjambok. The fifth appellant Theresa Kabondo, had among other injuries, a broken left arm. These brutal assaults and torture took place in full view of the police who needless to say did not do anything. The appellants were denied any medical attention.

The appellants submitted that they were in fact victims of serious political violence and were merely being punished for belonging to an opposition party. They asserted that the charges brought against them were meant to cover up the offences perpetrated against them by their captors.

The magistrate in the court *a quo* denied all the appellants bail because he felt that if granted bail their safety would be in great danger from the war veterans and the same members of the ZNA. The magistrate arrived at that conclusion because during the hearing of the applications for bail the court room was cordoned by the same war veterans. Some of them were even peeping through the court room windows, while others were peeping through the windows next to the magistrate himself.

At the hearing of the appeal State counsel continued to oppose bail still arguing that the safety of the appellants would be in danger. It was submitted that since the war veterans threatened to kill the appellants if they were granted bail they should still be denied bail. After the magistrate had refused them bail he remanded them to Bulawayo which was safe from those war veterans. But counsel for the State still argued that those war veterans would carry out their threats anywhere in the country. She went on to submit that tempers were high and that may lead to public disorder. She said the anger of the war veterans could easily threaten the security of other citizens and also state security.

State counsel's submissions do paint a very frightening picture of the behaviour of those war veterans. It seems they have become a law unto themselves. One would have expected them to have been arrested for threatening to kill other people. Yet the State appears to be suggesting that the rights of ordinary citizens be trampled upon in order to give way to unlawful activities of the said war veterans. There was clearly no basis for opposing bail in this case once the appellants had been transferred to Bulawayo. Consequently I granted each appellant bail on the conditions given on page 1 of this judgment.

## **Notice of Appeal**

After I had handed down this judgment *ex tempore* State counsel notified me that the State wished to appeal against the granting of bail. It was brought to the attention of State counsel that the decision was unappealable in the light of s 121(8) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] as amended by Act 8 of 1997. Section 8 recites that:

“(8) There shall be no appeal from a decision or order of a judge in terms of this section.”

In the result leave to appeal was refused *in casu*.

