PETER CHIKUMBA
and
GRACE NYARADZAI PFUMBIDZAI
versus
THE STATE

HIGH COURT OF ZIMBABWE
MAWADZE J
HARARE, 28 February & 4 March 2014

Criminal appeal

A.Rubaya, for the 1st appellant
A.Muvirimi, for the 2nd appellant
I.Muchini, for the respondent

MAWADZE J: This is an appeal against the decision of the Provincial Magistrate stationed at Harare on 18 February 2014 in which he dismissed an application by both appellants for bail pending trial.

Both appellants are being charged of three counts being, in count one contravening section 174 (1) (b) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*]; criminal abuse of duty as a public officer and counts two and three of FRAUD as defined in s 136 of the Criminal Law (Codification and Reform) Act [*Cap 9:23*].

The first appellant is the Chief Executive Officer of Celebration Centre Borrowdale Harare but at the time the offences were allegedly committed the first appellant was the Group Chief Executive Officer of Air Zimbabwe (Pvt) Ltd for the period February 2007 to December 2010.

The second appellant is the Legal Manager and Company Secretary for Air Zimbabwe holdings (Pvt) Ltd (AZH) and is currently on suspension as a result of these allegations. Mr *Muvirimi* for the second appellant took issue with the fact that the second appellant in the allegations outlined in the REQUEST for REMAND form 242 is said to be employed by Air Zimbabwe (Pvt) Ltd rather than AZH. He submitted that this impropriety is relevant to the charges the second appellant is facing as it is fatal to the state case since the second

appellant's employers are not the complainant in this matter but a total stranger Air Zimbabwe (Pvt) Ltd. I do not intend to be detained by this issue for the purposes of dealing with this appeal. While it would be strange and unforgivable for the respondent (the State) to fail to properly identify the complainant in such a seemingly serious case I do not believe that at this stage it can be meaningfully argued that this is fatal to the allegations made against the second appellant. This court may not be the right and the correct forum to argue this point and neither is it the appropriate moment. It however remains possible that if the respondent made a genuine error in identifying the complainant in this case the state may seek to amend the charge sheet at the commencement of the trial in order to substituted Air Zimbabwe (Pvt) Ltd with AZH where appropriate.

The facts alleged in respect of both appellants are as follows;

In count, it is alleged that on 18 March 2009 appellants abused their duty as public officers by appointing Navistar Insurance Broker (Pvt) Ltd (Navistar Insurance) to provide aviation insurance cover without going to tender and terminated the services of the existing insurer which was providing the same service.

In respect of count 2 it is alleged that both appellants in March 2009 agreed and connived with the directors of Navistar Insurance Givemore Nderere, Vukule Hlupo and Orten Mawire (whom I believe are also on remand and in custody) to defraud the Airline by inflating aviation insurance premiums. It is alleged that this was achieved by presenting several inflated debit notes to the Airlines for payment of aviation insurance to Colemont Reinsurance Brokers (Pvt) Ltd and Marsh Reinsurance Brokers (Pvt) Ltd both based in the United Kingdom. It is alleged that as a result the Airline's Finance Department acted upon this misrepresentation and released a total of Euro 15 783 452-93 to Navistar Insurance who only remitted Euro 10 607 859-22 to the two international insurance brokers and converted to their own use a total of Euro 5 895 695-49 to the Airline's actual prejudice.

In respect of count 3 it would appear that specific allegations are only made in respect of the second appellant and not the first appellant. It is alleged that on 8 May 2009 the second appellant connived with the same Directors of Navistar insurance Givemore Nderere, Vukile Hlupo and Orten Mawire and misrepresented to Air Zimbabwe (Pvt) Ltd that there was an urgent need to pay US$142 300 to the European Commission to avoid the placement of the Airline on sanctions and that the payment was a requirement in terms of the European

Commission Regulation Number 898-2005. It is alleged that this amount was paid to Navistar Insurance purportedly for onwards transmission to the European Commission but instead the culprits converted the money to their own use.

It is alleged that these transgressions came to light where sometime in 2013 the company Board of Directors chaired by Ozias Bvute queried the volume of amounts paid to Navistar Insurance by the Airline in respect of aviation insurance premiums for the period extending from April 2009 to April 2013. As a result the Board appointed BCA Forensic Audit Services to carry out a forensic audit on the Airline's financial records to determine if there was any misappropriation of funds. The BCA Forensic Audit report on 28 December 2013 revealed the anomalies which are the basis of the charges proffered against both appellants in counts 1 to 3.

As per the request for Remand Form 242 both appellants are linked to the offences in three ways;

(a) through the Forensic Audit Report.
(b) through statements by unnamed witnesses implicating them
(c) through documentary exhibits in this from of inflated debit notes in respect of the Airline's aviation insurance premiums.

Attached to the request for remand form 242 is an affidavit by the investigation officer Superintendent Viera Nyambo outlining the reasons why both appellants should not be admitted for bail. These reasons can be summarised as follows;

i) that the appellants are facing serious allegations involving huge sums of money.
ii) that there is a possibility and likelihood that if released on bail the appellants will influence witnesses since they are in positions of authority and know the identity of the witnesses in this case.
iii) that the investigations are of at an infancy stage and that these include extra territorial investigations in United kingdom and Hong Kong (whose nature is not specified).
iv) that if released on bail appellants would be able to communicate with witnesses even if an order against such communication is made.

During the bail hearing in the court *a quo* both appellants made detailed submissions in the application for bail addressing the concerns raised by the respondent in opposing bail.

The first appellant made mostly oral submissions and the second appellant in addition to oral submissions submitted a very detailed bail statement.

In its address to the court a quo the respondent did not address the pertinent and relevant issues raised by the appellants during the bail application. (See pp 40 - 42 of the transcribed record). All the respondent submitted is that appellants should not be admitted to bail on account of the serious nature of the offence they are facing and the likelihood that appellants would abscond.

The reasons given by the court *a quo* in dismissing the bail application by the appellant are very brief. The learned provincial magistrate summarised in an extremely brief manner submissions by both appellants and by the respondent. The reasons for the ruling hardly cover two pages. The decision of the learned Provincial Magistrate is informed by only two reasons; which are;

a) that the appellants are facing serious offences which are likely to attract very lengthy custodial sentences hence appellants are likely to abscond.
b) That the appellants are likely to interfere with witnesses and investigations if released on bail on account of their former positions at their workplaces.

Dissatisfied with this decision the appellants have now approached this court on appeal seeking bail pending trial.

In an appeal of this nature it is the learned Provincial Magistrate's decision in the court *a quo* to deny the appellants bail pending trial which should be attacked by the appellants. The often cited case of *S* v *Malunjwa* 2003 (1) ZLR 275 (H) is illustrative. It was stated that;

> "In appeals of this nature the approach to be adopted is looking at whether the magistrate misdirected himself when he refused bail. The appeal should be directed at the judgment of the court *a quo*. It is the judgement of the court *a quo* that the appeal must attack."

As was pointed out in *S* v *Ruturi* HH23/03 for the appellants to succeed in an appeal of this nature, it should be shown that the learned Provincial Magistrate committed an irregularity or a misdirection or exercised his discretion so unreasonably or in an improper manner to such an extent that the decision cannot be upheld.

Both appellants have attacked the decision of the court *a quo* on basically the following grounds;

i) that the court *a quo* erred in holding that the serious nature of the case the appellants are facing militates against the granting of bail as this on its own cannot be a valid ground to deny appellants bail

ii) that the court *a quo* failed to appreciate the defences raised by the appellants in order to properly assess the strength or the weakness of the state case against the appellants.

iii) that the court a quo erred in finding that the appellants are likely to interfere with witnesses and investigation when such allegations are not substantiated.

iv) That the court *a quo* erred in making a finding on the evidence presented that the appellants are a flight risk or likely to abscond when such an allegation was unsubstantiated.

THE LAW

In dealing with an application for bail pending trial our courts should be guided by the supreme law of the country which is our Constitution. Section 50 (1) (d) of the Constitution provides as follows;

"50 Rights of accused and detained person.
(1) Any person who is arrested
(a) ----------
(b) ----------
(i)----------
(ii)----------
(c) ----------
(d) Must be released unconditionally or on reasonable conditions, pending a charge or trial unless there are compelling reasons justifying their continued detention and
(e) ----------."

The simple interpretation I can accord to this provision is that an accused person who is yet to be tried like the appellants must be released on bail and can only be remanded in custody or denied bail if it is established that there are compelling reasons to justify continued detention or refusal to admit such an accused to bail. It is my view that our courts should at all times give effect to the constitutional provision when dealing with accused persons seeking bail pending trial. The onus is on the state, in this case, the respondent in the court *a quo,* to prove or show the existence of such compelling reasons justifying the

continued detention of such an accused and if the state is unable to discharge the onus such the accused should be released either unconditionally or on reasonable conditions.

In deciding whether there are compelling reasons justifying the denial of bail guideline should be sought from the provisions of s 117 of the Criminal Procedure and Evidence Act Chapter in which the following factors are useful;

a) whether if the accused is released on bail he will endanger the safety of the public or any particular person or will commit an offence referred to in the 1st schedule.
b) Whether the accused will stand trial.
c) whether the accused will attempt to influence or intimidate witnesses or to conceal or destroy evidence.
d) whether the facts released will undermine or jeopardise the objective or proper functioning of the criminal justice system inclusive of the bail system.

It is trite law therefore that bail should be allowed in the interests of an individual's liberty unless the interests of justice dictate otherwise. While each case should always be assessed on its own merits the court should always endeavour to strike a balance between protecting the liberty of the accused and safeguarding and ensuring the proper administration of justice.

In broad terms these are the principles which the court *a quo* was oblidged to adhere to and apply in dealing with the application for bail by the appellants. As already said in applying these principles the court *a quo* did find that there were only two compelling reasons why appellants should not be admitted to bail, which are the likelihood to abscond and likelihood to interfere with witnesses in the matter. The narrow issue this court has to determine therefore is whether the court *a quo* erred in making such a finding. I now proceed to answer that question.

The personal circumstances of the appellants are not an issue. They were outlined in sufficient detail in the court *a quo*. The first appellant jointly owns an immovable property No 5 Zebra Close Borrowdale with his wife and is willing to surrender the title deeds of the same property as surety if admitted to bail. The first appellant is a family man and owns a 25 hectare farm in Guruve. The first appellant served two terms as Chief Executive Officer of Air Zimbabwe from 2007 to 2010. He indicated that he left the Air line in 2010 and that he

does not own property outside Zimbabwe. These allegations were unearthed after he left Air Zimbabwe. When he was arrested the Police called him to the police station and he voluntarily surrendered himself. There is no indication that he was not co-operative with his police.

The second appellant is married with 5 children and resides at No 901 Bunnockburn Road Mt Pleasant Heights Harare with her family. Although she bought this property from her sister it was submitted on her behalf that she is yet to get title deeds of the property. The second appellant at the time of the initial remand was on suspension but had been employed by Air Zimbabwe for 29 years rising from being an air hostess to her current management position. It was submitted on her behalf that she was first suspended from work in June 2013, was reinstated but resuspended pending disciplinary hearing on acts of misconduct. The second appellant is willing to surrender her passport and provide surety in the form of immovable property if she admitted to bail. She too surrendered herself to the police and there is no indication of non co-operation with the police. She is willing just like the first appellant, to abide by any other stringent conditions the court may impose. As already said all this evidence was placed before the court *a quo* and it was not put into issue.

I now turn to the reasons given by the court *a quo* in denying the appellants bail pending trial.

It is common cause that the appellants are facing very serious allegations involving fundamental breach of trust and abuse of large sums of money in excess of US$ 5 ½ million in actual prejudice. This court cannot fail to take judicial notice of the current turmoil experienced by our public institutions where allegations of fraud, abuse of office, outright theft of public funds and assets, general looting and primitive accumulation of wealth are being made against the very senior officials on whose shoulders the nation entrusted the management of such public institutions. I therefore have no doubt that, and agree with the findings of the court *a quo,* that such culprits are likely to be visited with very lengthy sentences if convicted of such serious offences. Be that as it may, seriousness of the offence on its own is not a bar to the admission of one to bail. It is a factor to be considered with other factors see *S v Hussey* 1991 (2) ZLR 187 (S).

The court *a quo* considered the seriousness of these offences to together with other factors and came to the conclusion that both appellants are likely to abscond if admitted to

bail. The question to consider is whether this finding is properly made. The allegation that an accuse person is likely to abscond if admitted to bail should not be a bold and bare allegation to be substantiated in a reasonable manner. See *Madzokere and Ors* v *S* S – 8 – 12.

The following are some of the factors to be considered in deciding whether the accused person would abscond if released on bail. I hasten to point out that the list is not exhaustive. These are;

i) the nature of the charge and the severity of punishment likely to be imposed on the accused upon conviction. I have already discussed this factor and concluded that the offences are very serious and attract very lengthy custodial sentences

ii) the accussed's previous behaviour: The court *a quo* did not in my view address its mind to this important factor. Both appellants submitted before the *a quo* that they did not behave in any manner supportive of the allegation that they are likely to abscond if admitted to bail. Both appellants submitted in the court *a qou* that they were aware of the investigations being made in this matter and I believe they were questioned during the forensic audit investigations. The first appellant did not abscond and it was never alleged he failed to cooperate during the forensic audit. He surrendered himself to the police when asked to do so. The second appellant was well aware of these investigations as way back as June 2013. She was suspended, reinstated and resuspended well before the arrest. She also surrendered herself to the police when asked to do so and no adverse comments were made about her co-operation during the forensic audit. It has not been disputed that both appellants were aware that they were under investigations for the alleged offences for some time before their arrest but they did not abscond. I believe they were aware of the large sums of money involved well before their arrest. A proper assessment of this factor would have led to this inevitable conclusion that the appellants had ample time to abscond before their arrest but did not do so but instead surrendered themselves to the police. Failure by the court *a qou* to properly assess this factor constitute a misdirection and led to the improper exercise of the court's discretion in making a finding that appellants were

likely to abscond if granted bail(i.e. that appellants' previous behaviour). See *S* v *Mambo* 1992 (1) ZLR 248 (H).

iii) the accused's ability to reach another country or countries and the absence of extradition facilities between Zimbabwe and such countries. While it is common cause that the nature of the appellants' jobs entailed extensive travelling to many countries and it has not been shown that appellants are likely to flee from Zimbabwe to any particular country. The mere fact that an accused person has financial means to leave Zimbabwe for another country, whether legally or illegally on its own is not sufficient proof that such a person has an inclination to abscond. This allegation should be supported with cogent reasons and should also be assessed together with the accused person's previous conduct.

iv) the credibility of the accused's own assurances of his or her intention and motivation to remain and stand trial: I have already alluded to the personal circumstances of the appellants and the assurances they gave to the court *a quo* which have not been put in issue. This factor is also linked to the strength and or weakness of the state case. I will address that point.

v) the apparent strength or weakness of the state case: Mr *Muchuni* for the respondent properly conceded that the learned Provincial Magistrate did not consider the apparent strength or weakness of the state case. He however found refuge in the Request for Remand Form 242 and the investigating officer's affidavit attached to it which I have already referred to. This does not take the first respondent's case any further. The court *a quo* was enjoined to properly assess the strength or weakness of the state case by juxtaposing the allegations made against the appellants as per Form 242 and the investigation officer's affidavit against defence given by the appellants. See *Makamba* v *S* S 30 – 04. Failure to do so constitute a misdirection.

Both appellants as was stated in *S* v *Ndlovu* 2001 (2) ZLR 261 (H) disclosed the defences to the court *a quo* and did not make bold statements that they are not guilty of the offences. Let me pose to discuss the defences proffered and assess how it affects the strength of the state case.

In general both appellants denied conniving with each other or with the Directors of Navistar Insurance and challenged the respondent to provide such evidence of connivance.

I am however unimpressed by the first appellant's defence that he may not be accountable for what is alleged to have happened on account of the fact that as the Group of Chief Executive Officer he would be responsible for policy formulation, guidance and support of subordinates and that his management style was very democratic. If the first appellant as the Group Chief Executive Officer would have subordinates entering into contracts involving large sums of money, changing the Airline's insurers without his knowledge but under his watch, then he had no business being the group Chief Executive Officer. The first appellant can not be allowed to get away with it like the biblical Pilate. However incompetence or negligent performance of duty while it amounts to acts of misconduct does not necessarily amount to criminal conduct.

The first appellant did specifically address the allegations in count 1 and 2. In respect of count 3 as already said first appellant seems not to be implicated. In respect of count 1, first appellant stated that he did not connive with the second appellant or anyone in the appointment of Navistar Insurance. The first appellant challenged the respondent (the state) to produce minutes relating to the appointment of Navistar Insurance. The first appellant denies he the appointed Navistar Insurance hence his demand for such proof. The first appellant's version is that he approached the then Minister of Transport as per letter dated 25 March 2009 as the insurer Zimre was now adversely affected by sanctions and that the Minister responded by letter dated 3 April 2009. The first appellant said that he sought and he was granted permission to pay insurance premiums directly to Colemont Insurance brokers. According to the first appellant the allegations by the state do not show how the first appellant was specifically involved in the change of payment way directly to Colemont Insurance Brokers to now through Navistar Insurance. In the absence of specific allegations in that regard I agree that the allegations by the state are weak and would not augur well for the state case. The letter written to the first appellant by Navistar insurance on 20 March 2009 is unhelpful in this regard as first appellant indicated that he did not respond to it as he had obtained ministerial authority to pay directly to Colemont insurance brokers (Pvt) Ltd.

In respect of count 2 the first appellant said the allegations are vague as payments to Navistar Insurance continued to be made well after he had left the Airline and that no

evidence had been mentioned or proferred on how first appellant accessed the money paid to Navistar Insurance. In specific terms the first appellant denies making a fraudulent misrepresentation or raising inflated debit notes or being involved in payments made or approving such payments. The first appellant said the payments were approved and a made in the Finance Department. The first appellant's defence in count 2 is therefore that there is no evidence alleged to show connivance between him and the second appellant or with directors of Navistar Insurance or that he associated with Navistar Insurance Directors. The first appellant stated that he served his full two terms and that the Audit done in 2013 exonerated him of any wrong doing. If indeed what the first appellant is saying is correct then the State case is not as strong as alleged. No specific allegation have been made on how the money paid to Navistar Insurance in count 2 found its way to the first appellant after such payment to Navistar Insurance.

The second appellant does not seem to deny engaging Navistar Insurance replacing Zimre as alleged in count. What she denies is that such conduct is criminal. In respect of count 2 the second appellant admits that such payments were made to Navistar Insurance but disputes that the payment were inflated and that she was but she paid some of that money. In respect of count 3 the second appellant admits that such a payment was required by the European Union but that a wrong regulation was quoted. The second appellant blames her woes on the power struggle within the Airline. As an example she said she was shortlisted with Innocent Mavhunga for the Chief Executive post but other forces ensured she was out of the race for the top job as these allegations were raised, she was then suspended and charged with misconduct. The second appellant said she should have unwittingly invited trouble for herself when she raised concern as regards awards of contracts to companies associated with Board members of Air Zimbabwe with such Board members reaping huge financial benefits from their various companies linked to Air Zimbabwe. In order to prove this point the second appellant produced a diagram in the court *a quo* explaining or showing how certain Board members were linked to companies conducting business with Air Zimbabwe and that there was a serious conflict of interest in the transactions. The second appellant believes this is why it was decided to push her out through hook or crook. While this conspiracy theory sounds uninspiring, it nonetheless explains the second appellant's view as to why acts she deemed above board are now deemed criminal. The second appellant did not only pontificate on such

conspiracy theories but explained her role in all three counts challenging the state to show how and why her role is deemed criminal.

In count 1 the second appellant admitted awarding the contract to Navistar Insurance. Her explanation is that in March 2009 the Airline planes were uninsured due to sanctions and that Zimre company was on the sanctions list. As a result she said Willis Co in the United Kingdom withdrew the cover and notified Zimre Company but Zimre Company did not notify Air Zimbabwe in time. According to the second appellant there was now a crisis at the Airline resulting in an urgent meeting held with parent ministry officials. The second appellant said the Minister through a letter dated 3 April 2009 addressed to the Group Chief Executive Officer directed and authorised Air Zimbabwe to make placement of necessary insurance on to the international market by taking all necessary steps. The second appellant's view is that the import of the Minister's letter is to acknowledge the crisis and that a remedy was to be found without necessarily having to go to tender for placement of insurance. The second appellant said they had to act with speed to avoid grounding the planes with the attendant business implications and costs to the Airline. The second appellant places reliance on s 30(2) of the Procurement Act [*Cap 22:14*] which provides for a safety valve to enable State procurement entities to procure commodities expeditiously to the benefit of the State and nation in times of crisis or dire need without following the cumbersome tender procedure. The second appellant also placed reliance on the remarks of BHUBU J in *S* v *Mangoma* 2011(1) ZLR 6.7(H) commenting on he provisions of s 30(2) of the Procurement Act *supra*. I understand the second appellant's defence in count one to be that she acted in accordance with a lawful directive from the Minister to place the insurance without going to tender to avoid a national crisis and that it was not criminal for her to act accordingly. While the defences raised by the first appellant and the second appellant in count 1 are *prima facie* mutually destructive, one cannot dismiss outright the second appellant's version justifying her conduct.

In respect of count 2 the second appellant denies acting in convenience with Directors of Navistar Insurance and that no evidence was placed before the court to show the following important aspects;

(i) that it has not been shown how the insurance premiums are deemed to have been inflated in order to arrive at the alleged figure of Euro 5 895 695-49.

(ii) that assuming Navistar Insurance retained the Euro 5 895 695-49 how such retention constitutes criminal conduct as there was an obligation to pay Navistar Insurance for its services including a commission. The second appellant in order to buttress that point attached a letter dated 20 March 2009 from Navistar Insurance addressed to the first appellant as Group Chief Executive Officer outlining the commission to be charged based on a percentage of the premium before government tax, fees and levies, a Broker fee of £300 000 for other services, an administration fee, additional expenses occasioned by Air Zimbabwe being a peculiar customer on sanctions. I therefore understand the second appellant's defence in that regard to be that certain payments made to Navistar Insurance also included other contractual obligations like the £300 000 and that it should be alleged by the State in a clearer way how this money paid to Navistar Insurance found its way into the pocket of the second appellant and that no such direct or circumstantial evidence was placed before the court *a quo.* Further it is the second appellant's defence in count 2 that the nature of the misrepresentation she made is not clear in view of the contract between Air Zimbabwe and Navistar Insurance.

In respect of count 3 the second appellant alleges that Euro$142 300 was paid out to international insurers but denies that it was a payment to avoid the Airline being put on sanctions as alleged. Instead she said this payment was a top up first premium to level of liability required by the European Union and that there is a regulation to that effect but that in the instant case the wrong one was quoted by Navistar Insurance. The second appellant said in count 3 the State never bothered to even confirm if such payment reached the intended payee before crying foul, nor checked on the appropriate regulation.

It is clear that both the appellants in line with what was said in *S vNdlovu* 2001 (2) ZLR 261disclosed their defences in some detail explaining why they both believe they are not guilty of the offences alleged. The Learned Provincial Magistrate fell into error when he failed to consider the defences given by the appellants and assess how it affects the strength or the weakness of the State case. Failure to do so constitute a misdirection. Further, a proper assessment of the defences proffered by both appellants shows that on the evidence placed before the court *a quo* the State case is not very strong. This may therefore not induce both

the appellants to abscond. It is my finding that the conclusion made by the court *a quo* that both the appellants may abscond on account of the strength of the State case was not properly made after assessing all the factors. While the appellants face a serious offences I do not share the view that a proper assessment of other relevant factors leads to the conclusion that the appellants are likely to abscond and defeat the ends of justice.

Lastly I consider the other reason given by the court *a quo* that there is a likelihood that the appellants will interfere with the investigations and witnesses especially considering their former positions in the company. This finding by the court *a quo* is difficult to appreciate as it remained a bare assertion and unsubstantiated. There are no cogent reasons given hence it is difficult to accept that this finding is well grounded.

In relation to the first appellant he left Air Zimbabwe some three years ago. It has not been explained how he will possibly interfere with his former subordinates. The second appellant is currently under suspension and may well be dismissed from work as a result of misconduct charges she alluded to. It was never alleged that any of the appellants attempted to interfere with investigations at any stage even the investigations during the forensic audit. These charges were unearthed as a result of the forensic audit carried out which would mean that all if not most of the relevant documentary evidence was collected or gathered during the forensic audit. It is stated in the Form 242 Part B that statements have been recorded from witnesses which minimises the possibility of interference with State witnesses. What is said to be outstanding are bank statements and its not clear how the appellants would possibly interfere with such information. The so called state witnesses are not mentioned or identified. Since it has not been disputed that both appellants have not interfered with investigations I am unable to appreciate the basis upon which the court *a quo* arrived at the conclusion that there is real risk that the appellants will interfere with investigations. Further, it has not been shown why stringent bail conditions would not curtail such possible interference. The inescapable conclusion is that the learned Provincial Magistrate misdirected himself in making a finding that there is a real likelihood, on the evidence placed before the court *a quo* ,that the appellant will interfere with investigations and witnesses.

I am satisfied that the court *a quo* misdirected itself in a number of ways which I have explained. This is a proper case which the court *a quo* should have leaned in favour of the liberty of the appellants as the interests of justice are not jeopardised. The presumption of

innocence operates in favour of the appellants. There are no compelling reasons justifying the continued attention of the appellants.

In the result it is ordered that:-

1. The appeal be and is hereby upheld.
2. Bail pending trial be and is hereby granted in respect of both appellants on the following conditions:-
3. In respect of the first appellant
   - 3.1 The first appellant shall pay a sum of US$3000-00 to the Clerk of Court Harare Magistrates Court.
   - 3.2 The first appellant shall continue to reside at No 5 Zebra Close Borrowdale West Harare until the trial is finalised.
   - 3.3 The first appellant shall surrender his passport to the Clerk of Court Harare Magistrates Court.
   - 3.4 The first appellant shall surrender Title Deeds of the immovable property being a house jointly owned with his wife No.5 Zebra Close, Borrowdale West Harare to the Clerk of Court Harare Magistrates Court.
   - 3.5 The first appellant shall report thrice a week on Mondays, Wednesdays and Fridays, between 0600 hours and 1800hours at CID Serious Frauds Harare until the case is finalised.
   - 3.6 The first appellant shall not interfere with State witnesses or Police investigations.
4. In respect of the second appellant:-
   - 4.1 The second appellant shall pay US$3000-00 to the Clerk of Court Harare Magistrates Court.
   - 4.2 The second appellant shall stay at Number 901 Bunnockburn Road, Mount Pleasant Heights Harare until the trial is finalised.
   - 4.3 The second appellant shall surrender her passport to the clerk of Court Harare Magistrates Court.
   - 4.4 The second appellant shall cede Title Deeds to the immovable property Stand No. 8770 Salisbury Township also known as No 30 Covell Drive Southerton

Harare registered in Austin Garikayi Pfumbidzai's name as surety to the Clerk of Court Harare Magistrate's Court

4.5 The second appellant shall report thrice a week on Mondays, Wednesdays, and Fridays between 0600 hours and 1800 hours at CID Serious Frauds Harare until the case is finalised.

4.6 The second appellant shall not interfere with State witnesses or Police investigations.

Rubaya&Chatambudza, 1st appellant's legal practitioners
Muvirimi Law Chambers, 2nd appellant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners