INNOCENT NYAMURONDA
versus
THE STATE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 27 September 2016 & 10 October 2016

Bail application

N Mugiya, for the appellant
T Mapfuwa, for the respondent

ZHOU J: The appellant pleaded guilty to and was convicted by the Harare Magistrates Court of the offence of fraud as defined in s 136 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. He was sentenced to 24 months imprisonment of which 4 months imprisonment were suspended for 5 years on the usual conditions. A further 4 months imprisonment were suspended on condition of restitution. That left him with an effective imprisonment term of 16 months.

On 19 August 2016 the appellant noted an appeal against both the conviction and sentence. He subsequently applied before the Magistrates' Court for admission to bail pending determination of his appeal. The Magistrate dismissed the application and gave reasons in writing for the decision.

In order to succeed in this appeal the appellant must show that the learned magistrate misdirected herself when she dismissed the application for bail pending appeal. The appellant's grounds of appeal are tersely set out in the appellant's bail statement (paras 5-10 thereof). They are not explained anywhere in the statement. The first ground of appeal is that the learned magistrate erred by failing to give proper specific findings and conclusion as to the reason why bail pending appeal was denied. It is further contended, in the same paragraph, that the Magistrate's ruling did not show an appreciation of the factors to be considered in an application for bail pending appeal.

The first criticism of the Magistrate's judgment is not based upon a proper reading of the judgment. The Magistrate gave a handwritten judgment which is nearly 4 pages long in which she detailed the reasons for dismissing the application. These included the lack of prospects of success of the appeal, the seriousness of the offence, and the manner in which the offence was committed, all of which showed that the appellant was likely to abscond. The second criticism in that paragraph is equally premised upon an incorrect factual averment. That is so because the Magistrate showed that she was alive to the applicable principles. The learned Magistrate applied her mind to the prospects of success of the appellant's appeal (record 26, para 2), and the other factors such as the risk of abscondment, the seriousness of the offence in so far as it had a bearing on the risk of abscondment.

The second ground upon which the Magistrate's judgment is questioned by the appellant is difficult to understand. He suggests that the Magistrate "erred and grossly misdirected (himself) in holding that the appellant had an imprisonment term (*sic*) and the guilty level of the appellant (*sic*) was overwhelming….." But the appellant pleaded guilty to the charge. The essential elements of the offence were explained to him. He was convicted upon his own plea of guilt. Grounds contained in para(s) 7 and 8 of the bail statement allege that the sentence imposed induces a sense of shock. No authority has been cited to substantiate that assertion. The case of *Zulu & Anor* v *S* HB 69-10 which is cited by the respondent clearly shows that the sentence imposed upon the appellant is very lenient when regard is had to the amount involved as well as the circumstances and manner in which the offence was committed by the appellant. The appeal against the sentence imposed is without prospects of success.

This court finds no misdirection in the judgment of the learned Magistrate. The application for bail was property dismissed.

In the result, the appeal *in casu* is dismissed.

Mugiya & Macharaga Law Chambers, appellant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners.