

COLLINS CHIKOHO

APPLICANT

Versus

THE STATE

RESPONDENT

IN THE HIGH COURT OF ZIMBABWE
CHEDA AJ
BULAWAYO 5 & 15 NOVEMBER 2012

H. Shenje for applicant

Ms A. Munyeriwa for respondent

Application for bail pending appeal

CHEDA AJ: This is an application for bail pending appeal. The applicant was charged with fraud as defined in section 136 of the Criminal Law (Codification and Reform) Act 9:23. He pleaded not guilty but was convicted after a trial and sentenced to 5 years imprisonment of which 2 years were suspended on conditions of good conduct and restitution. He has now noted an appeal against both conviction and sentence.

According to the trial magistrate's record it was alleged that Collins Chikoho fraudulently arranged for a payment meant for Idnom Enterprises from Victoria Foods to be made into Chikos Investment ZB bank account number 4307-409915-200 a company owned by him and that Collins Chikoho further fraudulently bought maize bran and wheat bran from Victoria Foods the value of which he misrepresented to be an offset of Idnom Enterprises due but unpaid knowing that Idnom Enterprises had not consented to the change of payment instructions thereby causing actual prejudice to Victoria Foods, Gweru, of US\$29 385,59.

The applicant is the owner of Chikos Investments. He is neither owner nor director of Idnom. When he was unable to meet his obligation to supply maize to Victoria Foods he introduced Idnom to Victoria Foods as one of his companies. Idnom then supplied maize to Victoria Foods. The applicant arranged that since Idnom was supplying maize to Victoria Foods, Victoria Foods could make some of the payment to the account of Chikos, and to the applicant's personal account as an offset of the maize supplied to it by Idnom. The applicant supplied all the details of the payment arrangements and account numbers.

Mr Lang of Victoria Foods said he knew the applicant as a representative of Idnom. Victoria Foods, which did not ordinarily sell products on credit, was induced to deliver certain products to the applicant's company Chikos. They were made to believe that the sale of these

products on credit was to offset what they owed for certain products to Chikos when in fact those products had come from Idnom.

When Victoria Foods had to make certain payments they were advised to pay to Chikos account and some of the money to applicant's personal account, only to be confronted later by Idnom demanding payment.

The above facts reveal a well planned fraudulent system by the appellant. The appellant claimed that Mr Lang lied, but the trial court accepted the evidence of Mr Lang and the other state witnesses.

In an application of this nature where the court is called upon to assess the prospects of success on appeal, the court cannot analyze all the evidence in detail as in an appeal case, but deals with the record of proceedings to make its assessment, and can only conclude that there are prospects of success on appeal if there are glaring errors or inconsistencies in the evidence on which the conviction was based.

In this case there is no basis to conclude that the evidence led will be rejected by an appeal court which never had the opportunity to hear and see the witnesses at the trial.

The applicant, after submitting that there was no evidence to convict him also argued that the matter was a civil and not a criminal one. Given what I have stated above I am unable to agree.

The applicant submitted that the sentence was excessive. In my view, an effective 3 years after 2 years were suspended, for an offence involving \$29 000 is not excessive.

There are no prospects of success on appeal and so the application for bail pending appeal is dismissed.

Shenje & Company applicant's legal practitioners

Civil Division of the Attorney General's Office respondent's legal practitioners