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**THE PEOPLE v BENJAMIN SIKWITI CHITUNGU, JOSEPH ANTONIO ARTHUR  
AND DAVID MAZUMA (1990 - 1992) Z.R. 190 (H.C.)**

HIGH COURT  
MUZYAMBA, J.  
1ST APRIL, 1992  
(C.H.P.B.A./6/92)

**Flynote**

Criminal law and procedure - Bail - Police bond - Cessation/cancellation of - Powers of police inaint.

**Headnote**

The accused were charged with theft of a motor vehicle contrary to s.281(a) of the Penal Code. Their application for bail pending trial in the magistrate's court was refused. The accused then applied to the High Court arguing that there was no valid reason to support the refusal. The accused were prior to the commencement of trial on police bond which was cancelled.

**Held:**

(i) Since a police bond does not automatically cease once the accused appears in

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court, the Court has the power to inquire into the reason for cancellation of the bond and if the reasons are inadequate to issue or extend bail.

(ii) Neither the police nor the Court have the power to cancel bonds issued by either of them.

**Legislation referred to:**

1. Criminal Procedure Code, Cap. 160 s.123(1).
2. Magistrates' Courts Act 1980 (UK), s.128, 129(2) and (b).

**Other works referred to:**

*Archibold* 42nd ed. 3-19.

For the accused: S. Sikota, Central Chambers.  
For the State: M. Chibiya, State Advocate.

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**Judgment**

**MUZYAMBA, J.:**

This is an application on the part of the accused for bail pending trial on a charge of theft of motor vehicle contrary to s.281(a) of the Penal Code Cap.146. The application is supported by an affidavit and further affidavit to which are annexed respectively the Court's ruling below and part of the case record. There is no affidavit in opposition filed.

Paragraphs 6 and 7 of the supporting affidavit read:

- "6. That when the case came up I as advocate for all the accused persons made an application for bail which application was denied in that the prosecutor had misled the Court earlier on when he lied to the Court that the accused persons were arrested in Botswana when in actual fact they were arrested in Lusaka, Zambia. To this effect the accused persons are willing to surrender their passports to this honourable Court for verification if at all they were arrested in Botswana. A copy of ruling of the Court below is now exhibited and marked "SS1".
7. That the ground on which the bail has been refused is baseless and unfounded in that the accused persons are all Zambians of fixed abode who are willing to provide working sureties and to go further surrender their passports until the final determination of this case.'

And in her ruling the learned magistrate said:

"First I would like to state that police bond is granted in the discretion of the police and ends at the time the accused appears in court and not before. That being the case the fact that the police exercised their discretion in favour of the accused and then exercised the same discretion against them is no concern of this Court. The conduct of the accused persons up to the time they had their liberty could and may affect the consideration of the Court in granting bail. Coming to the submissions, the Court has carefully considered them and they are of substance. However, the prosecutor has submitted that the accused persons were arrested in Botswana, counsel has submitted that they were arrested in Zambia, but willing to surrender their passports. Court considers this point and is of the view that if the accused are left at large they are likely to dishonour the conditions and may not be seen. For this reason the Court is unable to grant bail. Accused has the right to appeal to the High Court.'

Mr *Sikota* for the accused submitted that the learned trial magistrate was wrong to refuse the application because there was no evidence that, if granted bail, the accused would dishonour the bail conditions and disappear. On the other hand Mr *Chibiya* objected to the application saying

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that the Court below was right in refusing to grant the accused bail because the offence was prevalent and that the Court has applied the correct principle.

This application raises three important issues, namely whether or not:

- (a) the police have powers to cancel a police bond;
- (b) a court has a duty, where a bond has been cancelled by the police, to inquire into the reasons for the cancellations when considering an application for bail;
- (c) a police bond automatically ceases on an accused person appearing in court to answer a charge upon which the bond was granted.

Section 123 ss.(1) and (2) of the Criminal Procedure Code Cap.160 provide:

"123(1) When any person, other than a person accused of murder or treason, is arrested or detained without warrant by an officer in charge of a police station, or appears before or is brought before a court, he may, at any time while he is in the custody of such officer, or at any stage of the proceedings before such court, be admitted to bail upon providing a surety or sureties sufficient in the opinion of such officer or court, to secure his

- appearance, or released upon his own recognizance if such officer or court thinks fit.
- (2) Subject to the provisions of s.126 before any person is admitted to bail or released on his own recognizance, a bond (hereinafter referred to as a bail bond) for such sum as the Court or officer, as the case may be, thinks sufficient, shall be executed by such person and by the surety or sureties or by such person alone, as the case may be, on condition that such person shall attend at the time and place mentioned in such bond and at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned."

It is quite clear from the section that any police officer in charge of a police station, or the court before whom any person is accused of an offence other than murder or treason, has powers to grant such person bail. Bail granted by the police is commonly known as police bond.

Do the police have powers to cancel a police bond?

A police bond will normally require an accused person to attend before the police station or court on a mentioned date, time and place, and if before then it appears to the police that the accused is about to leave the country or disappear or is interfering with or likely to interfere with witnesses or about to commit a similar offence the police may arrest the accused, cancel the bond and detain him in custody pending appearance in court. The answer therefore to the above question is in the affirmative.

Where a bond is cancelled, is a court duty bound to inquire into reasons for cancellation when considering an application for bail? Since the police and court have each jurisdiction to grant bail to an accused person, it is my considered view that the Court has a duty, where it has come to its attention that the accused's bond was cancelled by the police, to inquire into the reasons for the cancellation when considering bail application and, where it is not satisfied with the reasons for cancellation, to grant bail to the accused on the same conditions as the bond. In the instant case the learned magistrate refused to address her mind to the reasons why the bonds for the accused were cancelled. The fact, as it appears from the record, is that the bonds were cancelled because of an internal circular that

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no bonds should be granted in cases of theft of motor vehicles. No doubt this circular, if it exists, is *ultra vires* the provisions of s.123 *supra* and therefore null and void. By failing to address its mind to this fact the Court erred in both fact and law.

Does a police bond automatically cease on an accused person appearing in court to answer a charge upon which the bond was granted?

Section 123 *supra* does not say what happens to a police bond once an accused person on bond appears before the Court. I have looked at the sixth (1991) edition of the *Magistrate's Handbook* and it is silent on the issue. The English practice is found in s.129 ss.(2)(a) and (b) of the Magistrates' Courts Act, 1980. The section is reproduced in paras.3-19 of Archbold 42nd ed.and it provides as follows:

- "129(2) Notwithstanding anything in s.128(1) above, the power of a court under ss.(1) above to remand a person on bail for a further time -
- (a) where he was granted bail in criminal proceedings, includes power to enlarge the recognizance of any surety for him to a later time;
  - (b) where he was granted bail otherwise than in criminal proceedings, may be exercised by enlarging his recognisance and those of any sureties for him to a

later time."

Section 128 referred to in this section deals with powers of magistrates either to remand in custody or release on bail an accused person. Subsection (a) above relates to bail granted by other courts and (b) to bail granted by the police.

It is quite clear from the section that a magistrate before whom an accused person is on bail granted by another court or police has powers to enlarge that bail. In fact, it has always been the practice in Zambia for magistrates to extend police bonds.

I find therefore that a police bond does not automatically cease upon an accused person appearing in court to answer a charge on which he was granted the bond. The learned magistrate was therefore wrong in expressing the view that a police bond ends at the time an accused appeared in court. And as a matter of practice, I wish to state that once a bond has been enlarged by the court it cannot be cancelled by the police without the sanction of the court. Neither can the court cancel a police bond. It has no such powers. Only the police can do so on sufficient grounds.

For the foregoing, the application is granted. Each accused is granted cash bail in the sum of K10 000 with one suitable working surety in the like amount. The sureties to enter into recognisances.

In passing off I wish to say that no appeal lies against a refusal for bail. Under s.123 *supra* ss. (3) the course open to such an accused bail application has been refused by the subordinate court is to apply to the High Court. It is therefore misleading for a magistrate to tell an accused person to appeal to the High Court against such refusal.

Application granted.

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