

BUKASA PELU SEKELE v THE PEOPLE (1990) S.J. (S.C.)

SUPREME COURT

NGULUBE, DCJ., GARDNER, AJ. S., AND CHAILA, J.S.

25TH JULY, 1989 AND 18TH JUNE, 1990.

S.C.Z. JUDGMENT NO. 4 OF 1990

HP/24/92, APPEAL NO. 3 OF 1989,

Flynote

Appeal - Bail - Order 27 of Rules of the Supreme Court - Whether bail can be granted by Supreme Court in a criminal matter

Headnote

The applicant was convicted of theft of a motor vehicle and sentenced to six years imprisonment with hard labour. He entered an appeal to the High Court and applied for bail pending the hearing of the appeal. His application for bail was refused. He appealed to the Supreme Court and the application, heard by a single judge was rejected. He then brought the application before the full bench of the Supreme Court under Order 27 of the Rules of the Supreme Court.

Held:

No jurisdiction can be assumed by the Supreme Court to grant bail in any criminal matter unless an appeal against conviction or sentence for against a decision in a first appeal has been properly lodged in Supreme Court in accordance with either section 12 or 14.

Case cited:

1. Chilufya V The People SCZ Judgment No. 8 of 1986

For the applicant: D. A. Kafunda and E. S. Silwamba.

For the State: N. Siyakumaran, Assistant Senior State Advocate.

Judgment

NGULUBE, DCJ.: delivered judgment of the court.

On the 25th of July, 1989 we refused an application for bail and said we would give our reasons later. We now give those reasons.

The facts of this case were that the applicant was convicted in the Subordinate Court of theft of motor vehicle, and sentenced to six years imprisonment with hard labour. He entered an appeal to the High Court and applied to the Subordinate Court for bail pending that appeal. This application for bail was rejected and the applicant made a further application for bail to the High Court. The application was heard by a High Court judge and was also dismissed. The applicant then made an application to Supreme Court and his application was dealt with by a single judge of this court and refused. The applicant then requested a full court to deal with his application under the terms of Rule 27 of the Supreme Court Rules.

Mr. Silwamba on behalf of the applicant argued that, in view of the fact that section 22 of the Supreme Court Act (Cap. 52) provides that when the High Court has refused to exercise its powers to grant bail under Section 336 of the Criminal Code, the applicant is entitled to apply to this court for bail pending his appeal to the High Court, it follows that he can appeal to this

court in this case, and he has further argued that, if it were held that the section applies only where there is a substantive appeal from the High Court to the Supreme Court, then this application should be treated as an appeal from the judge's order refusing to grant bail.

Mr. Silwamba further argued that, in view of the fact that Section 8 of the Supreme Court Act provides that where the Act or Rules do not make provision for any particular point of practice and procedure then the practice and procedure shall be as nearly as maybe in accordance with the law and practice for the time being observed in the Court of Criminal Appeal and the Court of Appeal in England, this court should assume jurisdiction to grant bail in a case such as this because that is the practice of the courts in England. Neither Mr. Silwamba nor Mr. Kafunda were able to give authority for this latter statement as to the practice in England.

Mr. Silwamba further referred the court to cases where this court had assumed jurisdiction on the grounds that an appeal lay against a refusal of a judge to grant bail in all cases, whether or not an appeal against conviction or sentence was pending before this court.

Mr Sivakumaran in reply argued that there was no jurisdiction for this court to grant bail or hear an appeal in this case, and that although Rule 27 refers to an application to the full court after a refusal by a single judge of this court, in the circumstance of this case, the single judge had no jurisdiction.

Finally in reply Mr. Kafunda argued that it would be unjust for this court to refuse to accept jurisdiction in such cases and that if this court insisted that such was the law, there should be legislation to extend the jurisdiction of this court.

In deciding this case we would respectfully adopt the reasoning and decision in the case of *Chilufya v The People* (1) and, so far as a reference to section 22 of the Supreme Court Act is concerned, we are quite satisfied that an application for bail under this section applies only where an appeal has been lodged in this court against the conviction or sentence by a lower court, and only after a refusal by the High Court to grant bail under section 336 of the Criminal Procedure Code. No appeal lies to this court in criminal matters except under the provisions of section 12 of the Supreme Court Act. which provides for such an appeal by any person convicted on a trial by the High Court or convicted by a subordinate court and sentenced by the High Court or under section 14 of the Supreme Court which provides for appeals to this court after appeals to the High Court. It follows, therefore, that no jurisdiction can be assumed by this court to grant bail in any criminal matter unless an appeal against conviction or sentence for against a decision in a first appeal has been properly lodged in this court in accordance with either section 12 or 14. Ruling of this court or by single judges of this court where jurisdiction has been assumed in order to grant bail in any other circumstances must be taken to have been delivered *per incuriam* and should not be followed in the future.

Mr. Silwamba told us that the law and practice in England was that the courts of appeal had power to grant bail after a refusal by a high court judge and argued that this court should follow such procedure. As we have said, Mr. Silwamba was unable to give us any authority for that proposition, but we have ascertained that his statement was incorrect in that note 18 to Order 59 Rule 1 in *The Supreme Court practice* (The White Book 1989 Ed), points out that an appeal from the refusal of bail in criminal proceedings by a judge in chambers is precluded by section 18 (1) (a) of the Supreme Court Act of 1981. The same note goes on to say that there is no statute or rule that allows any other avenue of appeal.

We note Mr. Kafunda's suggestion that the law should be changed to give this court jurisdiction to grant bail in cases such as this, but that is a matter that we must live to the legislature.

For the reasons we have given this application is refused.

Application refused

