ANDREW LETHON SHUMBA
and
CONRAD MUSARURO
and
TICHAONA MABASA
and
SHEPHERD ZIMUTO
and
TAWANDA CHIKOSI
and
EMMANUEL KOKERAI
and
MATTHEW DESIRE MUPANDA
and
JOSEPH JOHN
and
JOSEPH GATSI
and
TINASHE GONDO
and
TICHAONA MUREFU
and
LUCKMORE KACHERE
and
EDMORE DIMINGO
and
EDMORE CHIGWEDU
and
PARDON MABUGU
and
DANIEL BUNZA
and
LOVEMORE MAUNGWA
and
NORMAN MATAVIRE
and
LOVEMORE MADZIVIRE
and
SUNNY MADZIVIRE
and
BASIL MUZVAMBA
and
TANAKA GAVANGA
and
KUDZANAI MURUNGWENI
and
FRANK NKOMALI
and
TAKUDZWA PASIPANODYA

and
BLESSING TAFIRE
and
BEKEZELA DUBE
and
ISAIAH MURIMBA
and
GORE MANJONJO
and
MARVELOUS MAKANYIRE
and
COLEEN JACK
and
FIDELIS GARAFA
and
TAKUNDA CHABATA
and
BENJAMIN MAGURU
and
JEFFREY CHAKWANA
and
DELIN SATUKU
and
ANDREW EMMANUEL MULOTA
and
ENOUGH MUTSIWI
and
GILBERT MATARARA
and
NEVERSON SAMSON
and
WALTER MAKHALISA
and
ELSON KWARAMBA
and
PEPUKAI ZINZOMBE
and
MARTIN MWENDESI
and
DEVINE MUTANDWA
and
VATIAS PARADZA
and
NIMROD MOYO
and
THULANI ZINYEMBA
and
PRIDE CHAMPFIMVIRA
and

TICHAONA NDONDO
and
TAFATAONA MUNJOMA
and
CALISTO CHAKA
and
CRISPEN BASVI
and
EVERISTO NZUWA
and
BLESSING MAREMBO
and
THOMAS KUSEMWA
and
RUZIVE DZIMBANHETE
and
NOREST TAKAWIRA
and
SHINGI GOGOMA
and
NORMAN CHINYIMA
and
RICHY MUSARURWA
and
THONELI DLODLO
and
SANDY KARIMAMUNDA
and
FAGRESS ROBIN
and
MEMORY DEHWE
and
BRENDA MUZENDA
and
TALENT NHIRE
and
MUNYARADZI KANONAMA
and
AUSTIN MAINA
and
TICHAONA MANYENGAVANA
and
PANASHE MUKOBVU
and
SIMBARASHE GONDO
and
MARRON PACHIRERA
and
PHANWELL NYAMUNHU

and
SILAS ZHANGAZHIKE
and
PRINCE MUKOBVU
and
TICHAONA MUKANDI
and
EZEKIEL CHIMINYA
and
ELTON MUTERO
and
ROBERT SHATO
and
OBEY CHIMINYA
and
BROWN MUCHEMWA
and
TAWANDA MARIGA
and
KUDAKWASHE CHIPARAPATA
and
ENERGY MANYERE
and
MISHECK JAPHET CHIBVUTE
and
RUTH KANDEMIRI
and
PETROS MAISIRI
and
TAKUDZWA MUPFANYA
versus
THE STATE

HIGH COURT OF ZIMBABWE
MUREMBA J
HARARE:5; 9 & 14 May 2025

Bail appeal

K Ncube; J Bamu & G Mtisi, for the appellants
C Muchemwa & Ms. P A Gutu, for the respondent

MUREMBA J: The eighty-nine appellants, who are charged with participating in a gathering with intent to promote public violence, breaches of the peace, or bigotry as defined

in section 37(1)(a)(i) of the Criminal Law Codification and Reform Act [*Chapter 9:23*] (the Criminal Law Code), applied for bail in the Magistrates' Court. In that application the total number of accused persons was ninety-five. Their application was turned down. That bail application in the lower court was determined solely on the papers submitted by counsel, with no oral arguments presented. This appeal challenges the refusal of bail. The State filed its response, opposing the appeal.

1. The facts of the matter, as alleged by the State, are as follows: On 31 March 2025, at 9:20 AM, the appellants were part of a group that gathered at Freedom/Robert Mugabe Square in Harare. Their intention was to march through the streets of Harare and proceed to State House. The term 'State House' refers to the place where the offices of the president of the Republic of Zimbabwe are housed. At State House, so the allegations went on, the appellants wanted to forcibly remove the constitutionally elected President, Emmerson Mnangagwa, from office. Police officers deployed to Robert Mugabe Square to maintain order observed approximately 200 individuals gathered at the site. These individuals proceeded to pile stones, bricks, and tyres along Robert Mugabe Road. They then started throwing stones at the police officers while chanting a song titled "*Hatidi kupihwa order nemasasikamu*." Additionally, they were heard shouting, "*Enough is enough! ED must go nezvigananda zvake! Madzibaba weshanduko, huyayi mutitungamirire! Comrade Geza, huyai mutitungamirire!*" Members of the group took photographs and recorded videos of themselves, which they subsequently posted on various social media platforms. Accused [1] – [94] on the Form 242 were apprehended at the scene, while accused [95] was arrested at his residence after being identified through images and videos circulating online.

2. The grant or refusal of bail by the Magistrate's Court is an exercise of discretion. For an appellate court to be able to interfere with the exercise of that discretion, an appellant is required to show that the lower court committed an irregularity or misdirection or that the manner in which the discretion was exercised was so unreasonable as to vitiate the decision made. See *Chimaiwache* v *The State* SC-18/23; *The State* v *Mahommed* 1977 (2) SA 531 (AD) at 541B-C*; Aitken & Anor* v *Attorney-General* 1992 (1) ZLR 249 (S)*;* and *State* v *Chikumbirike* 1986 (2) ZLR 145 (S) 146F-G. The power of an

appeal court to interfere with the decision of lower court*'s* refusal to grant bail is therefore limited. See *Ncube* v *The State* SC-126/01.

3. In petitioning this court to reverse the court *a quo's* decision, the appellants raised 5 grounds of appeal. At the hearing, the State which had initially filed a response opposing the appeal, conceded that the court *a quo* had indeed misdirected itself in respect of the findings it made regarding all the grounds of appeal raised by the appellants. I turn to deal with the grounds *seriatim*.

4. The first ground of appeal

The first ground of appeal was couched as follows:

> **"The court *a quo* grossly misdirected itself by finding that the appellants fell into the category of exceptional cases in which their release on bail pending trial would undermine public safety, a finding which was both contrary to the evidence and contrary to the dictates of section 117 (3) (e) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] (the CPEA)."**

5. In its judgment, the court *a quo* explicitly stated that:

> "The court was convinced in its mind that this was one of those exceptional cases where the accused persons should not be admitted to bail on the ground of public safety."

6. On behalf of the appellants, it was submitted that no evidence whatsoever was presented by the State to support its argument that the release of the appellants who were allegedly gathered at Robert Mugabe Square at the time of their arrest, awaiting an address by certain individuals would endanger public safety. The investigating officer's affidavit, which formed the basis of the State's opposition to bail, neither referenced nor established that ground. On that basis, Mr. *Ncube,* counsel for the appellants, argued that the court *a quo* had grossly misdirected itself in its finding. Mr. *Muchemwa*, representing the State, conceded that the State had not placed any evidence before the court *a quo* demonstrating that the appellants' release on bail would pose a threat to public safety.

7. Both the concession by counsel for the respondent and the argument by counsel for the appellants cannot be gainsaid. It is evident that no evidence or information was presented before the court *a quo* to support the claim that releasing the appellants on bail pending trial would endanger public safety. It is a legal requirement that when the

State opposes bail which is a constitutional right[1], it must present compelling reasons to justify why it seeks the denial of bail. In doing so, the State must provide cogent reasons explaining why a particular legal ground applies, and these reasons must be supported by proper information. See *S* v *Hussey* 1991 (2) ZLR 187 (S) at page 191. This means that since bail is a constitutional right, an accused person is generally entitled to be released while awaiting trial. However, the State may oppose bail if there are strong and valid reasons to do so. When opposing bail, the State is required to present clear and well-substantiated arguments demonstrating why the accused should not be released. These arguments must be backed by credible evidence or legal reasoning, rather than mere assumptions or vague assertions. In essence, the law prevents arbitrary denial of bail, requiring the State to justify its opposition with solid facts and legal grounds. In *casu*, it is surprising that the Court *a quo* denied the appellants bail on the ground that they posed a danger to public safety, despite the fact that the State had not relied on this ground in its opposition. Instead, the State argued that granting bail to the appellants would disrupt the maintenance of peace and order in the country and that the court had a duty to protect the public from social despondency. It is important to note that these are two distinct legal grounds with different requirements for their application. However, the learned magistrate appears to have confused and conflated them. The likelihood that the accused will endanger public safety is a ground provided under section 117(2)(a)(i) of the CPEA. The likelihood that the accused will disturb public order or undermine peace or security is a separate ground provided under section 117(2)(b) of the CPEA. This distinction is critical in ensuring that legal decisions are based on the appropriate legal framework rather than misinterpretations or errors.

8. The two grounds differ in both their focus and the specific requirements used to establish them. With the likelihood that the accused will endanger public safety, the requirements for its establishment are provided under s 117 (3) (a) of the CPEA. The concern is whether the accused poses a direct and immediate threat to individuals or society through violent behaviour or a pattern of criminal conduct. To establish whether the ground has been met the court assesses the following factors: whether the charge

[1] S 50 (1) (d) of the Constitution of Zimbabwe, 2013.

itself implies violence; any prior threats or resentment the accused harbours against others; the accused's past criminal behaviour, particularly offences listed in the First Schedule, plays a role; whether the accused has previously committed an offence in the First Schedule while on bail; and any other relevant factors which it deems important. With the likelihood that the accused will disturb public order or undermine peace or security, the requirements for its establishment are provided under s 117(3) (e) of the CPEA. This ground is not necessarily about direct violence by the accused but rather whether their release might cause unrest, public outrage, or a loss of confidence in the justice system. Its requirements are as follows: The nature of the offence must be likely to cause shock or outrage in the community it was committed; the community's reaction to the offence could lead to disorder if the accused is released; the accused's own safety might be at risk if released due to possible backlash; the release of the accused might undermine public confidence in peace, security, or the justice system. In short, the key difference between the two grounds is that s 117(2)(a)(i)) focuses on the accused's behaviour and whether they are dangerous whereas s 117(2)(b)) focuses on community reaction—whether releasing the accused might cause social unrest or harm confidence in law enforcement. Essentially, one ground evaluates the accused's potential for violence, while the other considers the broader impact on society.

9. By confusing and conflating the two legal grounds, the learned magistrate ultimately made an erroneous finding that the appellants' release on bail would endanger public safety. Furthermore, he failed to conduct a proper analysis to determine whether this ground had been established in terms of section 117(3)(a) of the Criminal Procedure and Evidence Act (CPEA). It appears that the learned magistrate was not fully cognizant of this legal provision. Additionally, he failed to justify his conclusion that public safety would be compromised, offering nothing more than a sweeping assertion without substantive reasoning.

10. This court notes that in his judgment, the learned magistrate stated:

> "Considering the manner in which public roads were barricaded with stones and tyres, as well as the fact that law enforcement agents' vehicles were stoned, the court was convinced in its mind that should the accused be released on bail pending trial, the sense of peace and security amongst the generality of society is likely to be undermined."

11. In making the above statement, the learned magistrate had clearly shifted to section 117(2)(b), a different legal ground, which pertains to the likelihood of disturbing public order, public peace, or security. Although the State relied on this ground to oppose bail, it however failed to present cogent reasons supported by evidence to substantiate its claim. The learned magistrate did not properly analyse the factors set out in section 117(3)(e) to determine whether that ground had been sufficiently established. His reasoning, as presented, is inadequate to validate the ground. He did not discuss whether the release of the appellants on bail might cause unrest, public outrage, or a loss of confidence in the justice system. He did not discuss whether the appellant's own safety could be at risk if released on bail. In light of the above, I am satisfied that the court *a quo* misdirected itself in concluding that the release of the appellants on bail would endanger public safety, disturb public order, or undermine public peace and security.

12. ***The second ground of appeal***

The second ground of appeal reads:

> "**The court *a quo* grossly misdirected itself in denying appellants bail in circumstances in which the court wrongly applied the concept of judicial notice and relied on unknown videos which were not before the court and had not been relied on by the State."**

13. It was submitted on behalf of the appellants that the court *a quo* wrongly applied and misconstrued the concept of judicial notice when it said it took judicial notice that there were protesters who had gathered at Robert Mugabe Square and clashed with the police and that video images and of the incident were available online. Mr *Ncube* argued that whatever video images the learned magistrate saw online, are not known and they were not authenticated for them to be relied on in a court of law. The internet sites were not disclosed. Judicial notice can only be taken in instances in which the source of information is of undisputable accuracy. The internet is not a source of information of indisputable accuracy. The State conceded to this ground of appeal. In this court's view, that concession was properly made.

14. In its judgment the court *a quo* stated:

> "In this instant the court took judicial notice of the fact that it is in the public domain that protesters who had gathered at Robert Mugabe square clashed with the police details who were deployed to maintain peace and order. In this era of technology, the

> video footages and images of the incident are readily available on line on the internet. Although all accused persons appear to create an impression that there were not present at the scene of crime at the material time the incident in issue occurred, the court was convinced that considering the manner the accused are alleged to have conducted themselves." (sic)

15. In *S* v *Ndlovu* (Criminal Appeal 148 of 1983; SC 116 of 1983) [1983] ZWSC 116 (14 November 1983) GEORGES CJ remarked that;

> "Hoffmann, in his Law of Evidence (2 Ed) at 291, sets out the basic principle underlying the concept of judicial notice. "A court takes judicial notice of a fact when it accepts it as established, although there is no evidence on the point. Generally speaking, judicial notice will be taken of fact's which are either so notorious as not to be the subject of reasonable dispute, or which are capable of immediate and accurate demonstration by resort to sources of indisputable accuracy. The date of Christmas would fall within the first category, while the date of Easter in a particular year would be an example of the second."

HIS LORDSHIP went on to say,

> "While the principles are simple enough to state, the results of their application might well occasion surprise to the layman who may be inclined to accept as indisputable matters which are quite liable to being successfully disputed. For example, the layman may immediately assert that if the robot shows green for travellers on one of two intersecting roads it would show red on the other. But plainly this is so only if the robot is working properly. If it is not it may show green on both roads and a motorist could not be convicted merely by proving that he entered one road in the intersection while the light on the other road was showing green. Particularly in criminal cases in which proof beyond a reasonable doubt is required assumptions of notoriety can only be made in cases in which a dispute seems impossible.
>
> It must also be borne in mind that a fact cannot be said to be notorious merely because the judge is well aware of it as an individual. The trial magistrate in considering that he could take judicial notice of the existence of the camps relied on the fact that he had himself tried people' who had entered the country illegally having trained in South Africa. Reliance on such knowledge is clearly wrong. Judicial notice can be taken of a fact because it is well known - not because the particular judge is well aware of it. It is vital to keep the distinction clear, otherwise whether or not judicial notice is taken of a fact will depend on the judge before whom the case is tried. If a judge happens to have tried several cases of a certain type before he will take judicial notice of facts proved in those cases whereas if he has not, he will require proof - Clearly an undesirable situation"

16. In summary, the principle of judicial notice, as explained by the Supreme Court refers to a court accepting a fact as established without requiring formal evidence if the fact is either (a) so well known that it cannot reasonably be disputed or (b) capable of immediate verification through sources of indisputable accuracy. However, the Supreme Court cautioned that applying this principle can sometimes lead to surprises, as assumptions that seem obvious to the layperson may not always hold true. For

instance, a traffic light showing green on one road does not necessarily mean it shows red on the intersecting road, especially if the light is malfunctioning. In criminal cases, where proof beyond a reasonable doubt is required, judicial notice should only be applied to facts that are indisputable. The Court also emphasized that a fact cannot be considered notorious simply because a judge is personally aware of it. Judicial notice must be based on facts that are widely recognized and not be based on a judge's individual experiences. Otherwise, the application of judicial notice would vary depending on the particular judge handling the case, leading to inconsistency—a situation that should be avoided. In fact, relying on an individual judge's experiences amount to nothing but the bringing in of extraneous evidence into the record by a judicial officer. It can easily lead to unwanted allegations of bias on the part of that judicial officer. Based on the principles outlined in *S* v *Ndlovu (supra*), the argument made by Mr. *Ncube* appears to be unassailable. Judicial notice can only be taken of facts that are either (1) so notorious that they cannot reasonably be disputed or (2) capable of immediate and accurate verification from sources of indisputable accuracy. In this case, Mr. *Ncube* argued that the magistrate wrongly took judicial notice of the presence of protesters and video images available online without proper authentication. This raises a valid concern because, judicial notice must be based on universally recognized facts, not on the individual knowledge or observations of a particular judge. In casu nothing shows that the magistrate relied on online videos after verifying their authenticity or the sources from which they came. The internet is an open repository where accurate, distorted, progressive, retrogressive, morally correct and at times clearly vile information may all be posted. Blind reliance on it may be catastrophic. In this case, the magistrate's findings betrayed his apparently wrong conception that everything posted on the internet is accurate and may be relied on. Clearly, he misapplied the concept of judicial notice. The internet, as Mr. *Ncube* correctly stated, is not a source of indisputable accuracy, as online materials can be manipulated, misrepresented, or be lacking in context. Reliance on unauthenticated internet videos as a basis for judicial notice without verifying their accuracy, contradicts the principle that judicial notice must only be taken where a fact is beyond reasonable dispute. Judicial notice is meant to remove the need for evidence only in cases where verification is either unnecessary or indisputable—something that does not apply to videos posted online without clear authentication.

17. In essence, the magistrate in his judgment was asserting that he took judicial notice of the protest at Robert Mugabe Square and the subsequent clash with the police. The magistrate justified this by stating that the events were widely known in the public domain and that video footage and images of the incident were readily accessible online. This implies that the court did not require formal evidence to establish the occurrence of the protest and the clash. Furthermore, the magistrate noted that, despite the accused persons attempting to create the impression that they were not present at the scene of the crime when the incident occurred, the court was nevertheless convinced, presumably based on the nature of their alleged actions, that they were indeed involved. However, this reasoning raises concerns, particularly in light of the principle outlined in *S* v *Ndlovu*. First, it would appear that the magistrate was convinced, prematurely so, that the appellants should not only be denied bail but that they were in fact guilty of the crime they were charged with. There is no evidence that he indeed watched the alleged videos. There is equally no evidence of how many people watched the same videos to make them of the acceptable notoriety. The magistrate imagined and assumed that everyone relies on the internet for information. If it was him only who saw the videos on the internet, bringing his own observations into the bail hearing of the appellants would certainly be prejudicial. Imagining that the videos were there and that the magistrate saw them, reliance on such online video footage and images would still remain problematic because as argued by counsel for the appellants, such material is capable of manipulation and can easily be taken out of context. Its sources were neither specified nor authenticated. Once that is accepted, it undermined the basis for judicial notice. As already stated, what compounds the issue, is that the videos were never formally presented in court and were viewed solely by the magistrate, in the absence of the appellants and the State. Needless to state therefore, the learned magistrate clearly misdirected himself on that aspect.

18. ***The third ground of appeal***

The third ground of appeal is couched as follows.

> **"The court *a quo* grossly misdirected itself by denying the appellants bail in circumstances in which the appellants had not been identified on the unknown videos."**

19. It was submitted on behalf of the appellants that the court *a quo* wrongly denied them bail by relying on undisclosed videos from unidentified internet sources that were never produced in court. The court stated that these videos depicted protesters clashing with the police at Robert Mugabe Square. However, no connection between the footage and any of the appellants was established. None of the appellants were identified in the videos as participating in the clashes. Mr. *Ncube* argued that, notably, in its ruling, the court merely referenced protesters clashing with the police but failed to clarify whether the appellants were among them. Additionally, the investigating officer, in his affidavit opposing bail, did not assert that the appellants appeared in videos of the protest. Mr. *Ncube* contended that the learned magistrate, in denying bail, relied on an argument not advanced by the State and considered evidence that was never formally presented before the court. The State conceded this ground of appeal. That concession was once more, well made.

20. The court *a quo* denied the appellants bail based on the basis of videos from undisclosed online sources without establishing that any of the appellants appeared in them. That undermined the evidentiary basis for the decision. I have already demonstrated that judicial notice could only have been taken if the facts of this case had been indisputable or could easily be verified from sources of unquestionable accuracy. By conceding the ground, the State implicitly acknowledged that the court erred by relying on unverified evidence that did not establish any direct link between the appellants and the events in question. Given the principles of fairness and due process in bail proceedings, the concession aligns with the need to ensure that legal determinations are based on properly established facts rather than assumptions or unauthenticated materials.

21. The fourth ground of appeal

The fourth ground of appeal stated that: -

> **"The court a quo grossly misdirected itself by failing to give due weight and consideration of the appellant's uncontroverted and unchallenged detailed explanations as to the nature and places of their arrests and defences to the charge."**

22. It was submitted on behalf of the appellants that it is apparent from the record of proceedings that the appellants deposed to affidavits in which they gave succinct and elaborate details of how and where they were arrested on the day in question. Suffice to mention that the explanations by the appellants as to how and where they were arrested established *alibi* defences and revealed that they were arrested by the police in a dragnet. The evidence in these affidavits including the *alibi* defences were not challenged by the State in any way. The affidavits therefore remain uncontroverted and their *alibis* remain uncontested. All that the court *a quo* said was:

> "Although all accused persons appear to create an impression that there were not present at the scene of crime at the material time the incident in issue occurred, the court was convinced that considering the manner the accused are alleged to have conducted themselves." (Sic)

23. *Mr Ncube* submitted that the court *a quo* did not proceed to interrogate the defences which were raised by the appellants in their affidavits- that they were victims of a police dragnet. He submitted that the court a quo therefore fell into error and misdirected itself.

24. Counsel for the State, Mr. *Muchemwa*, conceded this ground of appeal and submitted that the State intended to lead evidence from the investigating officer, who was present at the appeal hearing, to clarify how some of the appellants were arrested on the day in question. He acknowledged the misdirection by the court *a quo* and stated that after the appellants were denied bail, the State had engaged the investigating officer to gather information from the police officers involved in the arrests about how the individual appellants were arrested. The State now intended to address the magistrate's misdirection by introducing *viva voce* evidence during the appeal. The approach suggested by the respondent is clearly wrong. It is nothing more than adducing fresh evidence on appeal. Mr. *Muchemwa* however did not specify the legal basis for introducing such fresh evidence at this stage. I also noted that the State had not even filed a formal application to do so. Mr *Muchemwa* merely stated that the investigating officer was present to testify on the appellants' arrests. He seemed oblivious of the fact that this was not a bail hearing but an appeal against a decision to refuse bail made by a lower court. The exigencies are obviously different.

25. In appeals, the court is bound to the four corners of the record of proceedings from the lower court and the evidence presented therein. It is my considered view that if

additional evidence is to be introduced in a bail appeal, it should be in exceptional circumstances, and the party seeking to do so must apply for leave from the judge, providing justification. In this case, no such leave was sought. Furthermore, the evidence the State intended to introduce was not based on new facts arising from the appeal but related to an issue previously contested in the court *a quo.* The State had alleged that all the appellants except appellant [88] were arrested at the crime scene, but the appellants strongly disputed this, asserting they were arrested elsewhere in town. This created a material dispute of fact that should have been resolved by leading *viva voce* evidence in the lower court. That was the proper stage for the State to present the investigating officer's testimony regarding the arrests. The appellants would have had the opportunity to cross-examine him and, if necessary, present their own evidence to rebut his claims. The magistrate would then have assessed the testimony and made findings on where each appellant was arrested.

26. When I queried from Mr. *Muchemwa*, why the investigating officer had not testified in the lower court, he admitted that he did not know, as he had not handled the matter at that stage. He further explained that, at the time of the proceedings before the court *a quo*, the investigating officer did not have statements from the police officers who had conducted the arrests. Those statements were only sought later, and the investigating officer managed to obtain only 15 of them. Based on the statements, the State was now attempting to "have a second bite at the cherry"—seeking to remedy the magistrate's misdirection by presenting new evidence on appeal. The approach is procedurally improper. The purpose of an appeal is not to give one party an unfair advantage by introducing evidence that should have been presented earlier. Allowing new testimony at this stage effectively turns the appeal court into a forum for a fresh bail application, which undermines the principle of finality in litigation. Moreover, the appellants would then have to cross-examine the State's witness(es) and potentially lead *viva voce* evidence themselves, further distorting the appeal process. An appeal is meant to assess whether the lower court erred and determine if that misdirection warrants interference with whatever decision the lower court made. The State's attempt to cure its failure to lead evidence in the court *a quo* contradicts this principle and should not be permitted.

In view of the foregoing, I uphold the ground of appeal by the appellants that the court *a quo* grossly misdirected itself by failing to give due weight and consideration of the appellant's uncontroverted and unchallenged detailed explanations as to the nature and places of their arrests and defences to the charge.

27. The fifth ground of appeal

The fifth ground of appeal reads:

> **"The court *a quo* grossly misdirected itself in concluding that if the appellants are to be released on bail, they are likely to pursue their plan to protest in circumstances in which no link or relationship had been established between the appellants, the character called Nyokayemabhunu and the alleged protesters."**

28. It was submitted on behalf of the appellants that in denying them bail the court *a quo* stated in its judgment that: -

> "The court was convinced by the submission by the State that should the accused persons be released on bail, they are likely to pursue their plan to protest."

29. The appellants argued that no cogent evidence was presented to support the court's finding. The investigating officer merely alleged—without substantiation—that the appellants were likely to commit further offences because they had not yet accomplished their mission. The State then repeated the same bald claim in its opposition to bail. Citing *Edmore Shoshera & Others* v *The State* HB 103/22, counsel for the appellants argued that the Form 242, the investigating officer's affidavit, and the State's written submissions failed to establish any link between the appellants and the protesters present on the day in question. No evidence was provided to indicate the specific role of each appellant in the alleged offence. Mr *Ncube* argued that the State's case relied on a vague assertion that the appellants were members of a WhatsApp group called *Nyokayemabhunu*, where they allegedly communicated their intent to protest and attack police officers. However, the prosecution produced no evidence connecting the appellants to this group. Additionally, no evidence was presented linking them to *Blessed Runesu Geza* or *Godfrey Karembera*. The State ultimately conceded that the court *a quo's* finding that the appellants would continue protesting if granted bail was purely speculative, as no evidence had been submitted to support that conclusion.

30. I agree with the sentiments echoed in the *Shoshera* case wherein MAKONESE J said,

> "The facts alleged in the Request for Remand Form 242 or the charge sheet must disclose a link between the accused and the alleged offence. Where several persons are detained on an initial arrest on suspicion of committing an offence, the state must provide the court with adequate information that indicates how the accused persons who are ultimately separated from the rest and are charged are alleged to have committed the particular crime alleged and the role they played."

31. Based on the facts of the matter as provided in Para 1 of this judgment, it does not appear that the State fully satisfied its obligation to provide adequate information detailing how each of the accused persons specifically committed the alleged crime and the role they played. The facts presented describe a collective gathering and general conduct of the group but do not specify what each appellant did to justify their arrest and charge. While it is alleged that protesters engaged in violent conduct, there is no clear indication of which appellants, if any, actively participated in piling stones, throwing objects at the police, chanting slogans, or inciting violence. While the description implies that the gathering was large and included acts of disorder, there is no direct evidence cited such as individual identification or witness testimony that connects each appellant to specific illegal acts. The State did not detail the process by which the appellants were separated from the rest of the protesters or how it concluded that they had played a criminal role. The narrative suggests that videos and photographs were posted on social media, but there is no mention of whether those materials were verified, authenticated, or used to positively identify the appellants in the act of committing an offence. Without such verification, reliance on online images alone is insufficient to establish criminal culpability. Appellant [88] who is accused [95] on the Form 242 was arrested based on images and videos circulating online, yet the State did not specify what actions in those videos linked him directly to criminal conduct.

32. The State failed to adequately individualize the allegations and evidence against each accused person. A proper presentation of evidence would require detailed accounts of each accused's role, verified identification methods, and substantiated facts linking them to specific unlawful conduct. Since this was not done, the arrests and charges appear broad and generalized rather than specifically justified for each accused. At trial, the prosecution may struggle to prove beyond a reasonable doubt that each accused actively participated in the alleged criminal acts. During this appeal, Mr. *Muchemwa*

admitted that, despite 95 accused persons being involved, the State has only 15 statements from the police officers who conducted the arrests. He further conceded that the State currently has no evidence against 80 accused individuals, as the officers involved in their arrests failed to submit statements when handing them over at the police station. He explained that the investigating officer is now attempting to locate the arresting officers, an effort that raises concerns about practicality and timing.

33. As it stands, the appellants arrested on 31 March 2025 have been in custody for over a month, yet investigations, despite involving only police witnesses, remain incomplete. This suggests that the accused will likely remain on remand for an extended period. It is concerning that law enforcement agents arrested accused persons and transferred them to the police station without properly documenting their identities as police officers, where they arrested the accused persons and the circumstances surrounding their arrest. Given the lack of evidence, it is likely that the State will ultimately withdraw the charges. Unfortunately, this will likely occur only after the accused have spent a prolonged period on remand. Mr. *Muchemwa* also conceded that, if the matter were to proceed to trial now, proving the guilt of 80 accused persons without witness statements would not be possible. He acknowledged that the State has since determined that these arrests were carried out in a dragnet operation, meaning some individuals uninvolved in the protests may have been mistakenly or wrongly detained. Yet, despite this realization, the Form 242 categorically states that all accused persons except accused [95] were apprehended at the crime scene.

34. Based on the foregoing analysis, the court *a quo's* finding that the appellants would likely resume protesting if released appears unsupported by evidence and speculative rather than factually grounded. As already stated, the State failed to present concrete evidence linking each appellant to specific acts of violence or active participation in the protest. Without verified statements, proper identification, or individualized roles established, the assertion that all 89 appellants would continue protesting is speculative. The court *a quo* based its finding on the bald assertion that the protest had not yet accomplished its mission, implying that the appellants would inevitably continue their actions. However, no evidence - whether statements, recovered communications, or past conduct was presented to substantiate this claim. Assumptions alone do not meet

the legal standard required to deny bail. The State itself conceded that this finding was speculative and lacked supporting evidence. This admission further underscores the court *a quo's* misdirection in relying on an unproven premise as a ground to deny bail. The revelation that the arrests were carried out indiscriminately (dragnet operation) raises doubts about whether all accused persons were indeed involved in the protest. Some may have been wrongfully arrested, making a blanket assumption about their future conduct deeply flawed. Given the absence of direct evidence proving intent to continue protesting, the court *a quo's* finding was incorrect and unsupported by the facts. Bail determinations should be based on clear, credible evidence rather than speculation.

35. Equal treatment of accused persons

An important point to note is that *Munyaradzi Mazhiriri*, accused number 4 on the Form 242, filed a separate appeal after bail was denied for all 95 accused persons in the Magistrates Court. Despite initially opposing his bail application in the court *a quo*, the State reversed its position on appeal and consented to bail. Mr. *Muchemwa* explained that the State's concession was based on new information from the police officer who arrested that appellant, revealing that he had not been apprehended at Robert Mugabe Square, the alleged crime scene, but at Prince Edward, a location far from the protest site. As a result, *Mazhiriri'*s appeal was successful, and he was granted bail. Mr. *Ncube* argued that if *Mazhiriri*'s claim regarding his place of arrest was accepted, then the protestations of the other appellants regarding their own arrests should likewise be considered, as their circumstances are no different. He emphasized the principle of equal treatment for accused persons facing the same charges unless there are compelling reasons to justify differentiation. Despite this, Mr. *Muchemwa* opposed the notion of equal treatment, asserting that he was prepared to introduce evidence from the investigating officer regarding the locations of some appellants' arrests. However, this submission was made before I had dealt with and refused the motion that fresh evidence could be led at this stage from the investigating officer. I later dismissed the motion.

36. Given my ruling disallowing the introduction of new evidence in the appeal hearing, equal treatment of the appellants should be upheld based on the evidence originally placed before the court *a quo.* All appellants were initially denied bail under the same

circumstances, relying on the same set of facts presented in the Magistrates Court. Since new evidence was ruled inadmissible at the appeal stage, all appellants must be evaluated solely on the original record, ensuring fairness in the treatment of their cases. Precedent was set when *Munyaradzi Mazhiriri*, successfully appealed and was granted bail after the State conceded that he was arrested far from the crime scene, contradicting the blanket assertion in the Form 242. The State, through Mr. *Muchemwa,* conceded that these arrests were part of a dragnet operation, meaning innocent individuals may have been wrongfully detained. Since the prosecution acknowledged a lack of specific evidence against 80 of the accused persons, it would be inequitable to hold them to a different standard than *Mazhiriri* or deny them bail based on generalized assumptions. The State failed to provide individualized evidence linking each appellant to the alleged offence. The denial of bail was based largely on speculation rather than concrete proof. Without introducing new evidence to differentiate their cases, all appellants should be treated equally in bail considerations.

37. Conclusion

Having carefully considered the grounds of appeal raised by the appellants and the State's concessions on each of them, it is evident that the court *a quo* misdirected itself in denying bail. The failure to individualize the allegations, the absence of sufficient evidence linking each accused to specific unlawful acts, and the State's own admission of procedural irregularities all point to a flawed decision. The principle of equal treatment requires that all appellants, whose arrests were conducted through a dragnet operation without verified identification, be granted bail. Furthermore, the speculative reasoning that they would resume protests if released cannot be sustained without clear and credible evidence. Accordingly, the appeal is upheld, and bail is granted to all appellants.

38. The 88th appellant, Petros Maisiri, identified as accused number 95 on the Form 242 and in the court *a quo*, was arrested at his residence in Mufakose at 2:00 AM, the day after the demonstration. His arrest followed his identification in videos circulating on social media. In his affidavit, he did not dispute appearing in the videos, setting his case apart from the other appellants. However, this alone is not a sufficient reason to deny his appeal, as bail decisions must be guided by clear legal principles rather than mere

presence at the scene. The key considerations in granting bail include: Risk of flight: There is no indication that Maisiri poses a flight risk; Likelihood of reoffending**:** His mere presence at the protest does not, in itself, prove any intent to continue demonstrating or engage in unlawful activity; Interference with State witnesses: He was identified in videos and he would not know of any witnesses against him. While his presence at the crime scene is established, the prosecution still carries the burden of proving his direct involvement in illegal conduct beyond a reasonable doubt. Maisiri explained in his affidavit that both the police and the Minister of Home Affairs had assured the public that it was safe to conduct normal business on the day in question. He stated that he had gone into town to collect an order for processed milk from a client, with their meeting arranged along Robert Mugabe Way. After completing his business, he returned home. He denied participating in the demonstration. Additionally, he refuted any association with an individual named Nyokayemabhunu or membership in his WhatsApp group, dismissing these claims as baseless allegations without proof. He alluded to being at the wrong place at the wrong time. Maisiri therefore explained his defence to the charge. Since every accused person is entitled to the presumption of innocence until proven guilty[2], fairness dictates that Maisiri should not be treated differently unless compelling evidence justifies such differentiation. No such evidence was presented by the State.

39. At the conclusion of the hearing, State counsel submitted that the court could exercise its discretion and grant the appeal. However, concerns were raised regarding the incomplete addresses listed on the Form 242 for some appellants, such as entries like "Glen View 3." In response, appellants' counsel proposed obtaining full addresses from the appellants or their sureties and furnishing them to the court *via* affidavits. Accordingly, I ordered that once obtained, these affidavits be submitted to the State for verification by the investigating officer. The verification process took some days, thereby necessitating a couple of postponements, but it was ultimately completed. I directed the verification of the appellants' addresses to ensure that, in the event of default, the police can trace them to their places of residence. This measure was taken in the interests of the administration of justice, as granting bail should not compromise

[2] S 70(1)(a) of the Constitution, 2013.

due process by neglecting whether the accused will stand trial. In granting bail, courts must remain committed to ensuring that accused persons face trial and that their cases reach finality. Even if the State's case may appear weak, the interests of justice require that the accused stand trial so that the matter is properly adjudicated. It is therefore essential that the court receives assurance that the accused have a fixed place of abode before their release on bail.

40. In the circumstances, it is ordered that:

1. The appeal by all the appellants be and is hereby allowed.
2. The decision by the court *a quo* denying the appellants bail be and is hereby set aside and in its place is substituted the following:

   (i) Each accused shall deposit USD100 with the Clerk of Court at Harare Magistrates Court.

   (ii) Until the matter is finalized, each accused shall reside at the address listed in the schedule submitted to the State and the court by the accused's counsel during the appeal hearing.

   (iii) Each accused, save for Joseph Gatsi; Kudzanai Murungweni; Memory Dehwe and Munyaradzi Kanonama, shall report once a fortnight, every alternate Friday, between 6am and 6pm at CID Law and Order until the matter is finalised.

   (iv) Joseph Gatsi shall report at Chegutu Police Station; Kudzanai Murungweni shall report at Sanyati Police Station; Memory Dehwe shall report at Rusape Police Station and Munyaradzi Kanonama shall report at Glendale Police station once a fortnight, every alternate Friday, between 6am and 6pm until the matter is finalized.

   (v) Each accused shall not interfere with investigations.

MUREMBA J: .....

Zimbabwe Lawyers for Human Rights, appellants' legal practitioners
National Prosecuting Authority, respondent's legal practitioners