

CECIL RHANIEL CHENGETAI MUDEREDE  
versus  
SUPERINTENDENT CHANA  
and  
THE ATTORNEY-GENERAL

HIGH COURT OF ZIMBABWE  
BHUNU J  
HARARE, 26-27 February and 10 March 2004

### **Urgent Application**

BHUNU J: The accused was arrested and detained on the 7<sup>th</sup> February 2004 on various counts of fraud, contravention of the Exchange Control Regulations S.I. 109/96 and the Grain Marketing Board Act [*Chapter 18:14*].

He was subsequently brought before a magistrate on the 13<sup>th</sup> February 2004. He applied for and was duly granted bail in the sum of \$300 000-00 with the condition that he was to reside at his given address.

The applicant dully complied with the bail conditions and was released from custody.

Upon his release he was rearrested shortly thereafter it being alleged that he was facing fresh charges.

The defence however alleges that he was rearrested on the same charges, a fact which is denied by the State.

On the facts before me the possibility that the accused may very well be facing more charges than those he was facing at his initial remand cannot be excluded.

In fact the State has now filed an affidavit from Superintendent Chana the investigating officer in which he deposed that following his release on bail the accused was rearrested for investigations on fresh charges of a similar nature. Counsel for the applicant Mr *Chikumbirike* argues that the fresh allegations constitute the same charges because they are similar to the original charges for which the applicant was granted bail on the 13<sup>th</sup> February 2004. Having said that he proceeded to argue that once a person has been granted bail he cannot be placed in custody on the same charges. For that proposition he relied heavily on section 322 of the Criminal Procedure and Evidence Act which provides that:

“A person who –

(a) ....

(b) Has been admitted to bail but not duly brought to trial may be brought to trial in any competent court for any offence for which he

was formerly committed to prison or admitted to bail at any time before the period of prescription for the offence has run out.

Provided that, subject to subsection (2) a person referred to in paragraph (a) or (b) of this subsection shall not be liable to be committed to custody; or paragraph (b) of this subsection shall not be liable to find further bail.”

I do not read that section to mean that if one is granted bail for the murder of John the police cannot detain him during investigations for the murder of Peter simply because he has already been granted bail on a charge of murder.

It appears to me that the plain meaning of the language used by the Legislator is that an accused cannot be incarcerated for that particular offence for which he has been granted bail. To hold that he cannot be detained for other offences of the same name will certainly lead to an absurdity.

In this case I am satisfied that while the offences for which the accused was granted bail may bear the same name or fall under the same statutory provisions they are not the same as those he is currently under police detention. I say so because although the offences may bear the same name they are not identical.

Much has been made of the affidavit of the investigating officer in which he was amenable to the granting of bail under stringent conditions. But that affidavit related to the counts for which the accused had already been granted bail. It does not relate to the current fresh charges for which the accused is currently under police custody.

It is trite that the police have powers to arrest and detain suspects pending their appearance in court. Undoubtedly the police wield enormous frightening power. That power must however be wielded responsibly, honourably and with the due observance of the rule of law.

The police have statutory limits within which they can detain persons before taking them to court. In this case the court is concerned that the police having detained the accused on the 13<sup>th</sup> of February 2009 they have by now not taken him to court as is required by law.

We were told at this hearing that the police have obtained a warrant for the applicant's further detention in police custody. Such further detention in my view is uncalled for considering that the applicant was first detained in custody on the 7<sup>th</sup> February 2004.

Having said that the court will hesitate to interfere with police investigations in the face of clear evidence that the accused is facing fresh serious charges some of which have necessitated investigations beyond this country's borders. The police are however duty bound to observe statutory limits for the detention of suspects.

In the result it is ordered:

1. That the applicant's application for immediate release from police custody be and is hereby dismissed.
2. That the respondents be and are hereby ordered to take the applicant to court on Monday the 1<sup>st</sup> of March 2004.
3. That in the event that the respondents fail to take the accused to court as directed for any reason, the applicant shall be entitled to his release.

*Chikumbirike & Associates*, legal practitioners for the applicant.

*Civil Division, Attorney-General's Office*, legal practitioners for the respondents.