

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

OBLIGATORY ESSAY : L411

"A CRITIQUE ON THE OPERATION OF THE BAIL SYSTEM
IN ZAMBIA WITH REGARD TO SURETIES"

By

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I recommend that the Obligatory Essay prepared under
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entitled

"A CRITIQUE ON THE OPERATION OF THE BAIL SYSTEM
IN ZAMBIA WITH REGARD TO SURETIES"

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"IF WE ARE TO KEEP OUR DEMOCRACY, THERE MUST BE ONE
COMMANDMENT : THOU SHALL NOT RATION JUSTICE."

- Learned Hand. J

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DEDICATION

I dedicate this paper to my family,

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for the love and inspiration that they have given me
and also for all they have done for me to be where I
am today.

Also to

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ABSTRACT

The right to be at liberty is one of the fundamental rights guaranteed by the modern constitutions of all civilised countries. In spite of this, emphasis has now been shifted from the individual to the community and as such, has struck a balance between individual liberty and social control. To this effect, the Penal law is meant to protect society from the felonies committed by criminals. As against this, criminal jurisprudence is founded on the principle that even an accused is presumed to be innocent until proven guilty. It is from these conflicting concepts that the modern Law of Bails has evolved.

To this effect, this essay is a study of the operation of the bail system in the administration of criminal justice in Zambia. A serious study of this institution is necessary because the period before trial is too important to be left to guesswork and caprice.

The fact that many accused persons are remanded in custody raises disturbing questions as to the validity of the criteria used by magistrates in bail decisions, especially in determining or assessing the suitability of sureties. An accused person is seldom granted bail on his own recognisance. This practice demands the production of a surety or sureties as a condition of the accused's release. Certain factors are considered in assessing these sureties' suitability. These factors are both judicial and social. The problem that arises here is the relevance of some of these factors.

On the other hand, the fact that an accused can be granted bail on his own recognisance also raises disturbing questions as to the necessity of sureties. Furthermore, the contribution that sureties have made to criminal law in protecting or preventing an accused person from absconding trial is questionable.

Generally, this paper proposes to investigate the problems and ambiguities faced by both the magistrates and the accused person(s) when the issue of bail arises.

There are basically four chapters in this essay. The first chapter primarily introduces the bail system in Zambia with regard to its background, justification and purpose.

Chapter two discusses the general principles relating to the Law of Bails. It is in this section that the criteria upon which magistrates base their bail decisions will be determined. Various other issues, for instance bailable and non-bailable offences, will be looked into.

Chapter three deals with the various issues, inter alia, the necessity of sureties, an analysis of a magistrate's discretion in assessing the suitability of sureties and also the general inconsistency of the law in the way bail cases are handled.

The last section, chapter four, concludes this essay. Suggestions for reforms are given here.

CHAPTER ONE : INTRODUCTION TO THE BAIL SYSTEM IN ZAMBIA

1.1. HISTORY OF BAIL IN ZAMBIA

In order to analyse the effectiveness of the operation of the bail system in Zambia, one must look not only at the Zambian Law, but also at the source from which it derives its existence.

The history of bail is obscure and uncertain and is as old as the Law of England itself.¹ The issue of bail came about when the idea of administering justice was just being hatched, and where arrest inevitably implied imprisonment without preliminary enquiry until the Sheriff held his touru at least, and in more serious cases, until the arrival of circuit judges, whose appearance might be delayed for years. It was therefore extremely important to be able to obtain a provisinal release from custody. It was the Sheriff that was head of the executive part of criminal justice and he had the capacity to arrest, imprison suspects and admit them to bail if he so wished.

Since the Criminal Procedure Code, Cap. 160 of the Laws of Zambia (hereinafter referred to simply as CPC) is the main architect of the Law of Bail in Zambia, the history of the bail system in Zambia owes its origin to the to the inception of the Code in Zambia. Like all common law English speaking countries in Africa, Zambia has retained the colonial legacy whose ancestry is found in the Indian Codes of St Lucia 1889 and the Queensland Criminal

Code of 1889. The Queensland Codes on which the Penal Code and CFC are modelled, were first introduced by the British colonial authorities in Northern Nigeria in 1904 and consequently became the models for the African dependencies.

1.2 PHILOSOPHY BEHIND THE LAW OF BAILS

The Law of Bails is an important branch of the Law of Criminal Procedure and, as has been seen, the history of the bail system is the result of a dilemma which has occupied the minds of civilised men for centuries. Societies all over the world expect to be protected from the hazards of being exposed to the misadventures of one who is alleged to have committed a crime.

Persons responsible for the arrest of suspected criminals, that is, the police, approach the court with a prayer to allay the fears of society; as against this natural request, there is the accepted rule of criminal jurisprudence that even a felon is presumed to be innocent until he is proven guilty, regardless of whether he has committed the crime or not. It is this conflict of principles which has to be resolved and one resolution to the problem has been found in the concept of bail.²

Bail, however, should not be static law and should change in accordance with the prevailing social and economic conditions. The concept of bail in many countries has

indeed changed according to the changes of the centuries. As one author pointed out, in ages past it hardly existed, whereas today, it can hardly be questioned. It's progress and refinement merely reflects the evolution of man and civilisation. In a barbaric society one could hardly ask for bail, whereas in a civilised society, one can hardly refuse it.³

1.3 RELEASE FROM A POLICE STATION

Having arrested a suspect, the Police Officer conveys him to the Police Station. The Officer-in-Charge of that particular Station has the power to release the suspect or remand him in custody, after determining the seriousness of the offence. The general principle is that:

"Where a person is taken into custody for an offence without a warrant and is retained in custody, he shall be brought before a Magistrate's Court as soon as practicable."⁴

According to the Zambian CPC, an arrestee must be committed to court within 48 hours of his arrest or else be released.⁵ However, there are provisions to this rule, whereby one may still be remanded in custody after two days of his arrest. Such instances arise when the Police have not completed their investigations. When this occurs, a Remand Warrant must be produced and the arrestee taken to a recognised prison. On the other hand, where it is not practicable to

bring the arrestee before a Magistrate's Court within 48 hours of his arrest, the Officer-in-Charge of the Station must inquire into the case and determine whether it is serious enough to remand him in custody or release him on bail.⁶

Since no attempt has been made to define a serious offence, the Officer-in-Charge of the Station to which the arrestee is brought, has the discretion of granting or withholding bail.

The Police Officer may therefore release the arrestee either on a Police Bond or on Bail. A Police Bond may be defined as:

"whereby an arrestee is released from the Police Station on his own recognisance without a deposit of a sum of money as surety for his appearance at trial."⁷

Whereas, for one to be released on bail, a surety or or sureties are required. A Police Bond can only be given by the Police, whereas Bail may be granted by either the Police or the courts. However, all this is absolutely at the discretion of the Police.

In practice, there is no limit to the amount of time an arrestee may be kept in prison. When a Police Bond or Bail is denied, the arrestee may at any time be committed to the

courts where the issue of Bail from a Magistrate arises.

1.4 DEFINITION OF BAIL

Unfortunately, not every case can proceed on the first occasion; that is before the court. It is common, especially in the case of more serious offences, for the matter not to be ready to proceed on the first appearance of the accused. Therefore in cases where the police have arrested an accused and brought him before a court from custody, a decision will have to be made by the court whether to remand the accused back into custody during the period of adjournment or whether to release him on bail.⁸

The relevant Zambian Statutes do not attempt to define bail. However, for purposes of this paper, bail may be defined as the:

"release of an accused from custody where sureties are taken for the appearance of that person at a certain day and place to answer and be justified by law."⁹

From the definition, it is worth noting that the object of granting Bail is not to set the accused person free of the alleged charge, but rather it is to:

"release him from the custody of law and to entrust him to the custody of his sureties, who are bound to produce him to appear at his

trial at the specified time and place."¹⁰

Therefore, the expression "bail", in the legal sense, includes the process by which an accused is released from custody for a time which is granted on recognisance, with or without sureties provided by the accused.¹¹

As aforementioned, there is a difference between a Police Bond and Bail. This is merely so where a deposit of money is required. Furthermore, police bonds are granted for less serious offences such as theft and assault.

1.5 PURPOSE AND JUSTIFICATION FOR BAIL

It is necessary to recognise that a person formally charged with a criminal offence is not always necessarily guilty of the offence. Because of this, it is necessary to have provisions in our system that allow a person to remain free during the time that his case is being decided in a court of law. It is common knowledge that the majority of persons that are subjected to arrest by law enforcement agencies may eventually be found guilty in the court system. However, there is a certain percentage of individuals where this will not be the case.¹²

Bail in the criminal administration therefore, is seen as a recognised way of attempting to resolve the clash between the danger of the accused absconding and his right to prepare his defence and not to subject him to punishment before conviction, which may never eventuate.

The sole purpose of bail is to provide a procedure whereby a person under arrest or in custody awaiting trial for a criminal offence or pending the hearing of an appeal, may be released pending determination of the case.¹³

The justification for pre-trial release on Bail emphasises the importance of the presumption of innocence.

1.6 BAIL : A RIGHT OR PRIVILEGE?

The general principle in the English law is that:

"an accused person has a right to be released on bail, where he is not yet convicted of the offence charged, or even where he is convicted but his case has been adjourned for social inquiry, reports or other further information to be provided for the court before sentence."

Bail in Zambia, on the other hand, is not a right of the accused but, rather a matter of procedural privilege. The Constitution of Zambia points out that a person shall not be deprived of his freedom except in certain circumstances such as in the execution of an Order of a court made to secure the fulfilment of any obligation imposed on him by law,¹⁴ or for the purpose of bringing him before a court in execution of the Order of a court.¹⁵ However, the same chapter of the Laws of Zambia gives an accused person his only right, inter alia, the right to a trial within a reasonable time,¹⁶ including his basic right to a fair hearing.¹⁷

Section 123(i) of the Criminal Procedure Code states that:

"A person, other than a person accuse of murder or treason may at any time or stage of the proceedings ... be admitted to bail ... if the court thinks fit."

The wording of this provision makes it clear that Bail is not a right in Zambia.

Inspite of this, it is important to note that the right to bail is of value to an accused because it emphasises that it is for the prosecution to show good reason why bail should be withheld and not for the defence to plead for bail as a favour to which the accused is not prima facie entitled.

1.7 PRESUMPTION OF INNOCENCE

From the time of the decision of the Police to prosecute throughout the time of the accused's trial and up to his conviction, the question of his innocence necessarily arises.

Article 20(2)(a) of the Constitution ¹⁰ provides that:

"Every person who is charged with a criminal offence ... shall be presumed to be innocent until he is proven or has pleaded guilty."

The seriousness of the matter surfaces in the event of denial of bail to the accused because it means confinement

before conviction. Since he is legally innocent until the time of trial and conviction, it would appear appropriate that the accused be free from any personal expense and limitation and that he not be restricted in anyway.

The fact that bail is not a constitutional right under the CPC is inconsistent with the philosophy behind the Law of Bails, which recognises the criminal jurisprudence that even a felon is presumed innocent until proven guilty. It would thus appear that the harsh and unfavourable treatment that accuseds are subjected to in prison while in custody indicates that "you are guilty until proven innocent."¹⁹

The Laws of Zambia ought therefore to provide a right to bail with the exception of certain cases such as murder and treason or crimes punishable by death.

In this Chapter, we have endeavoured to study the question of bail in Zambia. It proposes to introduce the system of bail as well as to lend some credence to the philosophy of the Law of Bails.

In Chapter Two, we shall examine the practices and procedure of bail in Zambia, the criteria upon which Magistrates base their decisions on bail and also discuss the reasons for Police objections to bail.

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CHAPTER TWO : PRACTICE AND PROCEDURE OF BAIL IN ZAMBIA

2.1 PROCEDURE AT AN APPLICATION FOR BAIL IN A MAGISTRATE'S COURT

Most bail applications are made in the Magistrate's Court at a preliminary hearing. It has been stated that where an accused person has not been granted bail or bond from a Police Station, he shall be brought before a Magistrate's Court as soon as it is practicable.¹ If for some reason or the other a case cannot proceed after the Prosecution has stated its case against an accused person, they may ask for the accused person to be remanded in custody. It is at this point that the Magistrate may exercise his discretion whether or not to grant bail if an accused applies for it.

It has been observed by the author that, in Zambia, the majority of accused persons do not apply for release from custody. This is so because they are ignorant of the law regarding their privilege as to bail. Furthermore, magistrates rarely inform such accused persons², nor do they ask them, whether they desire to be bailed out.

However, in instances where an accused person does apply for bail, the Magistrate requests him to give reasons for such an application. Before accepting the reasons, the Prosecution is asked by the Court whether or not they have any objections to bail being granted. Although the granting or refusal of bail is always the matter for the Magistrate and not the Police, the former will obviously be much

influenced by the latter having or not having any objections.

The reply from the Police to the question of any objections to the accused being released on bail and the information relating to the accused in the case docket will assist the Magistrate to determine whether or not to grant bail. Where bail is denied, the accused person will be remanded in custody. On the other hand, if the Magistrate agrees to grant bail, the issue that arises is what, if any, requirements should be attached to it.³

An accused person is rarely released on his own recognisance and therefore a surety or sureties are required. When the Court is satisfied that the surety is worth the bail sum set and that the person understands his obligations of being a surety, it will then issue an Order of Release to the Officer-in-Charge of the prison. The accused person is then released from the custody of the Police to that of his surety or sureties, whatever the case may be.⁴

2.2 THE CRITERIA FOR BAIL DECISIONS

The Criminal Procedure Code,⁵ the only law relating to Bail in Zambia, does not provide the criteria upon which courts should base their decisions for determining whether or not to grant bail to an accused person. It simply provides for procedural aspects for bail. The absence of any such legislative provision appears alarming because in the exercise of their discretion, magistrates actually deal

with the much cherished liberty of an individual. It is therefore important that magistrates have clear guiding principles to help them ensure that their bail decisions take into account the interests of justice as well as the liberty of an individual.

The only express guidance in the Code aforementioned is that magistrates are not permitted to grant bail to an accused person charged with murder or treason.⁶ Furthermore, aggravated robbery has been held to be a non-bailable offence in a Magistrate's Court.

The Magistrates' Handbook⁷ and Archbold : Criminal Pleading ing Evidence and Practice in Criminal Cases,⁸ are the two texts that Zambian magistrates normally use as guidelines when granting bail. The Magistrates' Handbook states the crucial test that courts must apply when determining any bail applications, which is whether or not the accused person will appear before a Court for trial. In attempting to answer this test, the courts must consider the following factors:

"Before trial or conviction the following points will have to be considered:

- (i) the nature of the charge
- (ii) the nature of evidence in support of the charge
- (iii) the punishment likely to be

imposed if convicted

(iv) the likelihood of repetition
of the offence

(v) the independence and reliability of sureties"

Each of these factors will be examined separately and the way in which magistrates exercise their discretion will be shown.

(i) The Nature of the Charge

This factor refers to the seriousness or gravity of the accusation that an accused person faces. It has been felt that the more serious the offence charged, the stronger the temptation to abscond is likely to be since a dependant who is liable to receive a long sentence of imprisonment if convicted, has more incentive to abscond than one facing a less serious charge. Moreover, the more serious the offence, the smaller is the risk that can justifiably be taken either of the defendant absconding or of his committing another similar offence. At the other extreme, the comparative triviality of the offence may, of itself, indicate that a remand in custody is not justified, whatever the other consider-

ations.¹⁰

However, in Zambia, in practice, magistrates have refused to grant bail and justified their decisions on the point aforementioned; that the more serious the offence, the more likely a felon will abscond. Furthermore, magistrates differ in their definitions as to what amounts to a serious offence. Some have considered the seriousness of any offence to be dependant on the outcry from the public. For example, the case of attempted murder is serious enough to warrant remand in custody. Some magistrates have nevertheless granted bail because the crime is not punishable by death.

Although bail should be withheld in serious offences, it is not uncommon for magistrates to deny bail even in minor offences such as using abusive and insulting language. One therefore questions the applicability of this factor by magistrates in some instances.

(ii) The Nature of Evidence in Support of the Charge

This factor means that the weaker the evidence in support of the charge, the more readily the courts are in favour of granting bail. On the other hand, the stronger the evidence, the

lesser the magistrates will be inclined to grant bail.

There is much difficulty in the use of this factor to determine whether or not to grant bail because during the trial or the early part of the proceedings, the Magistrate is still receiving evidence, especially where the only evidence is of a witness' testimony which has yet to be given. However, the foregoing can only apply in cases where bail is asked for pending sentence or appeal in cases of being in possession of or receiving property stolen or unlawfully obtained, and also in many cases where the accused person has been apprehended whilst committing a crime. In these instances and because there might be 'strong' evidence in support of the charge, magistrates have tended to deny bail.

Inevitably, this factor has been abused by magistrates who have denied bail in cases where the evidence is 'weak', claiming that the evidence before them is strong enough to lead to a conviction.

(iii) The Punishment Likely to be Imposed if Convicted

This factor looks at the severity of punish-

ment which conviction will entail. The heavier the punishment likely to be imposed, the less willing magistrates are to grant bail for fear that the accused person might "jump" bail. For instance, in cases of rape and other sexual offences carrying the sentence of life imprisonment if convicted, magistrates have virtually denied bail because of the severity of the penalty.

Disturbingly, some magistrates have overlooked the factor of severity of punishment upon conviction and have released on bail persons charged with offences carrying substantially heavy sentence such as attempted murder, theft and housebreaking. One fails to see what merits there are for remanding an accused person facing a charge carrying a light sentence; for example, an accused person charged with giving false information to a public officer and releasing on bail another facing a charge carrying a heavier sentence. The explanation for this is that there is no code of rules on bail and as such, magistrates enjoy wide discretion in matters pertaining to bail.

(iv) The Likelihood of Repetition of the Offence

This means that magistrates are less likely to grant bail to accused persons charged with an offence whose nature is such that repetition of it is, to an extent, certain. A Magistrate will therefore not easily grant the release on bail of an accused person awaiting trial of offences such as burglary, theft, housebreaking and sexual offences such as rape. Experience has shown these magistrates that such offences have been repeated by accused persons while out on bail pending trial. Most importantly, such offences result in irreparable damage.

(v) The Independence and Reliability of Sureties

Before an accused person is granted bail by the Court, certain requirements need to be fulfilled. An accused person is hardly ever bailed out on his own recognisance, but with independent and reliable surety or sureties. However, the consideration of these independent and reliable sureties in determining bail applications will be subject for discussion later when examining the necessity for such sureties.

Despite the factors mentioned in the Magistrates' Handbook that the courts or the magistrates have taken into account before granting a release from custody, there are other considerations, not specifically provided for, that magistrates have considered.

Firstly, there is the criterion that relates to the accused person's safety. In practice, magistrates in Zambia sometimes refuse to grant bail to certain accused persons in order to avert acts of violence calculated to cause injury or worse to the accused person. In certain cases, the public may be so enraged about a particular crime committed by the accused person that they may decide to get personal vengeance, as was the custom in pre-legal eras. This type of action is normally expected from irate members of a family whose relative has been a victim of the accused person's criminal act. In a case such as this, a Magistrate may deny bail and thus protect the accused person from the public and/or from his co-defenders who may still be at large.

Secondly, magistrates have denied Bail to an accused person for his own interests. For example, where it appears that the accused person, once released, would take his own life rather than face the punishment imposed by the Court. In this context, it is the character and behaviour of the accused person that magistrates have to take into account when determining bail applications.¹¹

It has been further noticed that many magistrates have been biased in granting bail to accused persons who are in regular employment, such as public officers, civil servants and also businessmen. This bias arises because an accused person in regular employment, having interests to serve or protect, is not likely to jump bail. Those not in regular employment are rarely granted bail.

Finally, it may be mentioned that some of the bail decisions appear to have their justification on nothing more than the personality of a particular Magistrate. Some magistrates intimated that the question of whether or not to release an accused person on bail arose from the fact that after being on the Bench for several years, they developed a "sixth" sense which enabled tell whether a particular accused person was trustworthy or not.¹²

2.3 POLICE OBJECTIONS TO BAIL

Apart from the above reasons, the objections raised by the Police to the granting of bail are also considered by magistrates in a bail application. One author states the major premise on which the Police object to bail in the following terms:

"A major concern of the Police in pre-trial handling of arrested subjects centres around their perception of the broader Police task of crime detection and crime prevention.

According to this perception, when a person

has been arrested on suspicion of having committed an offence, the Police feel that it is their job to keep him in custody before trial if this helps to protect the community from the risk of further crimes and enable the Police to complete their investigations as quickly and efficiently as possible ..."¹³

The five main objections raised by the Police are:

- (i) previous convictions
- (ii) no fixed abode
- (iii) further inquiries
- (iv) likely to commit further offences
- (v) interference with key witnesses or with evidence.

When an accused person has been previously convicted, the Police will warn magistrates not to release him on bail. Some magistrates take this into consideration, although the law does not permit them to do so. Notably, previous convictions are irrelevant to magistrates because they must concern themselves with whether the accused person is of good character to appear before trial and not to judge him before his case.

Felons and misdemeanants brought before the Court who live in shanty townships may be difficult to track down if they do not appear before Court for trial. Furthermore, the Police are not well equipped; that is, with transportation

or manpower, to enable them to search for bail jumpers. In such cases, therefore, and in others where the accused persons have no fixed abodes, magistrates will not readily grant bail. There is a problem with this objection in that the term "fixed abode" is vague and may mean that places such as hostels may be excluded from being a permanent residence.

The Police will also use the excuse of conducting further enquires as a reason for opposing bail, even where it is unlikely that there is a chance of mustering any further evidence.

A further reason why the Police oppose the idea of bail is the likelihood of the accused person committing an offence while out on bail. In R v Phillips,¹⁴ J Atkinson stated in the Court of Appeal that housebreaking, in particular, is a crime which will very probably be repeated if a prisoner is released on bail, especially in the case of a man who has a record of housebreaking. It is an offence which can be committed with a considerable measure of safety. Again, this presupposes the accused person's guilt and acts as an anticipatory punishment in that it deprives the accused person of his freedom on the suspicion that he will commit another offence even before he has been convicted of the one for which he is presently demanding bail.

Lastly, the Police claim that an accused person, if released on bail, will interfere with key witnesses or with

evidence. However, in cases where magistrates have accepted this type of objection, they will also require substantiated evidence to support such objection.

2.4 BAILABLE AND NON-BAILABLE OFFENCES

A bailable offence is one punishable by imprisonment, with or without a fine, for a term exceeding three years or with a fine only. Whenever a person is accused of such an offence, he must be released on bail unless the Court, taking cognisance or the Officer-in-Charge of the Police Station from which the accused person is brought on arrest, considers that there is a serious risk that he will escape from justice or that proper investigations of the offence will be prejudiced by the granting of bail.

Bail, in these cases, may be granted either by a Court or by a Police Officer in whose custody an accused person happens to be if the accused person is prepared to give sufficient security for his appearance when required at a place and time specified. If a Court or Police Officer does not grant bail under these circumstances, the reason for not doing so must be recorded.¹⁵

The release on bail of any person accused of an offence punishable by death by a Magistrate is prohibited. Furthermore, the Magistrates' Handbook stipulates that magistrates are not permitted to release persons accused of aggravated robbery. A non-bailable offence, to this effect, is one punishable by death or by imprisonment for a term exceeding

three years. Persons accused of offences punishable by more than three years imprisonment are not ordinarily granted bail either by an appropriate Court. A High Court may grant bail upon application in such circumstances if it considers that proper investigations will not be prejudiced, that there is no serious risk of the accused person escaping or that there are no reasonable grounds for believing that the accused person is guilty though there may be grounds for further inquiry.

A Police Officer may not grant bail to a person accused of a non-bailable offence. A Court, that is, a High Court, may grant bail, but it must first of all carry out an enquiry into the matters set out before so doing.

In Zambia, murder, treason and aggravated robbery are non-bailable offences in a Magistrate's Court. For instance, in an unreported case in 1987, one of the accused persons charged with aggravated robbery was only released on bail by the High Court.¹⁶

Notably, the grounds for refusal of bail may be the same, both for one charged of a non-imprisonable and of imprisonable offences; for example, where there is reason to believe, in either one of the instances, that the defendant would fail to surrender to custody or commit an offence whilst out on bail.

2.5 INSTANCES WHEN BAIL MAY BE GRANTED

Bail is simply a security of some sort that is given by or for a person in custody and who is charged by formal complaint, indictment or information.¹⁷

From a practical point, we know that if an accused person did not have compelling reasons or grounds for taking care of his responsibilities within the judicial system, he might attempt to flee the jurisdiction of the Court. It is because of this common occurrence that it becomes necessary to have some type of procedure whereby the defendant will be less likely to abscond. Therefore, as seen above, the sole purpose of "bail" is:

"to ensure the personal attendance of the defendant in Court at all times when his attendance may be lawfully required."¹⁸

Notably, there are three main instances when this "bail" may be granted:

(i) Bail Pending Trial

This is an instance where bail is granted to an accused person who appears before a Court of Law for the first time straight from Police custody. In such a situation, the accused person is merely appearing for the purposes of the Court being informed that he is in Police custody and the charge against

him is stated. The defendant then pleads to the indictment and this completes the arraignment. The Court and Prosecution now set a date for trial. Pending the hearing of the trial, the Court may grant the accused person bail.

(ii) Bail Pending Sentence

This is whereby bail may be granted to a defendant who has been convicted of a crime, but has not yet been sentenced. Here, while the defence may be making a plea in mitigation of the sentence, that is, where the defence is putting forward reasons for making the sentence less severe than it might otherwise be, bail may or may not be granted to the defendant.¹⁹

(iii) Bail Pending Appeal

This arises in a situation whereby the trial has ended and the accused person has been convicted as charged and sentenced. Following this sentence, the defendant may appeal to a higher court against the decision of the lower court. Before the hearing of the appeal or whilst waiting for the appeal to be heard, that is, pending the appeal, the defendant can apply to the higher court to grant him

bail. In the case of Obaid & Quashi v The People, ²⁰ the applicants were convicted in a Subordinate Court and sentenced to imprisonment. They lodged appeals to the High Court and applied for bail to the High Court pending appeal. Bail was denied by the Judge. A fresh application for bail was made to another Judge of the High Court. In deciding this case, Sakala, J adopted the principle, on the practice and procedure existing in the High Court of Justice of England, that:

"An application, once refused by a Judge in Chambers, the applicant is not entitled to make a fresh application to any other Judge."

Since bail had been denied by one Judge in the High Court, the applicants could not re-apply to another Judge in the same Court, as there is only one High Court in Zambia consisting of puisne judges who, in all respects, have equal powers, authority and jurisdiction.²¹

In this Chapter, we have attempted to examine the procedures and practices of bail in Zambia and have also examined the criteria upon which magistrates base their decisions in determining whether or not to grant bail.

In the next Chapter, we shall endeavour to examine the purpose and necessity of sureties and also to discuss the discretion magistrates have in determining who may qualify as a surety and the bail sum to set.

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CHAPTER THREE : A CRITICAL ANALYSIS OF THE LAW ON SURETIES

3.1 PURPOSE AND JUSTIFICATION FOR SURETIES

The most common reasons for refusing bail are that if granted bail, the defendant would fail to surrender to custody or would commit an offence whilst on bail or he would interfere with witnesses.¹ In spite of this, a defendant may be granted bail unconditionally, in which case he is not required to provide sureties before being released. Having been released, the only obligation he is under is that of surrendering to custody at the appointed place and time. However, this is seldom the case. The Police or the courts normally attach requirements to a grant of bail. The most common and perhaps the most significant of these requirements is that of providing one or more sureties. A surety, therefore, is:

"a person who undertakes to pay the court a specified sum of money in the event of the defendant failing to surrender to custody as he ought."²

The undertaking into which the surety enters is called a "recognisance". Notably, both the Police and the courts, when bailing an arrestee, may require sureties, but they should only do so if it is necessary to ensure that the defendant surrenders to custody.

On granting bail, the Police Officer or the Magistrate fixes the security, that is, the amount of money which

the accused person and/or the person standing surety for him will be required to pay should the accused default. They will also be required to fix the number of sureties necessary to release the accused on bail. The defendant must remain in custody until suitable sureties in the stated sum have entered into recognisance.

The requirement for sureties does not involve the sureties or the defendant himself paying money to the court as a precondition of his release on bail. However, the defendant may be required to give security for his surrender to custody before release on bail. Giving security means that the defendant or somebody on his behalf deposits money or other property with the court, which will be forfeited should he abscond.

The object of the law is that sureties are there for the purpose of being responsible for the good behaviour of the person called upon to provide surety. This is so because without sureties, the Court may not order an accused to be bound over in his own recognisance. The justification for such security is because the advantage derived from deposits in lieu of bail bonds by sureties for an accused person results in the minimisation of difficulties should the question of forfeiture arise.

3.2 DEFINITION OF SURETY/SURETIES

As aforementioned, in the setting of bail, there is undue preoccupation with its monetary aspects. Security in

advance is generally required in courts, while release on one's own recognisance is rarely granted.

Section 123(i) of the *Zambian Criminal Procedure Code*,³ provides that a Magistrate has the power to determine the amount and conditions of bail he may attach to it. That is to say, he may demand the production of a surety or sureties as a condition for the accused's release. A surety, therefore, is a:

"... pledge by another person guaranteeing that if the accused person does not appear before the court at the specified time and day, he will pay a certain sum of money to the court."⁴

This envisages a bail of system which derives its effectiveness from supervision of the accused by sureties who acknowledge, in a recognisance, that if the accused fails to appear for his trial, they will owe a designated debt to the court.

Before a surety formally accepts the obligations imposed upon him, it is the practice to:

- (i) explain to him exactly what the obligations involve;
- (ii) ensure that he understands the obligations he has undertaken;

(iii) ensure that he is still prepared to undertake the obligations and that he is worth the sum involved after all his debts are paid, and

(iv) warn him of the consequences, which include possible imprisonment, if the defendant fails to appear when required to do so.⁵

3.3 QUALIFICATIONS OF SURETIES

The Criminal Procedure Code (CPC) provides that a person may be released on bail as long as he provides a surety or sureties sufficient to secure his appearance.⁶

As to the qualification of a surety, the law contemplates monetary qualifications, but it is the reliability of the surety to ensure the attendance of the accused at the prescribed time and place that is of prime importance.

According to some magistrates, the person(s) standing as surety must be financially capable of answering for the sum stated in the bond. In R v Saunders,⁷ it was stated that the capacity to satisfy the money requirement is one obvious test of respectability of the surety. There is therefore a duty placed on the Magistrate to ascertain the sufficiency of bail. Clearly, what constitutes sufficient surety lies in the discretion of the court.

In practice though, many accused persons have had difficulties in producing satisfactory sureties because magistrates

have demanded sureties with particular qualifications. Magistrates have considered the competency of contract of the surety. To this end minors, that is to say persons under the age of twenty-one years, lunatics and persons convicted and undergoing sentence, are not competent to stand as sureties. Other persons qualify, but their acceptance is subject to the discretion of the Magistrate. Practice shows that magistrates frequently accept sureties over the age of thirty but below seventy years. This is so because a person in this age limit is considered mature by some magistrates.

There is also a bias in favour of male sureties by some magistrates because, according to them, women are unreliable and less predictable in performing the duties of a surety.⁹ It can be conceived that to demand for a working surety would be a legitimate exercise of discretion and also to deny a woman the right to act as a surety on the grounds that she is a woman is, in no uncertain terms, discrimination. There is no provision for such discrimination in the Criminal Procedure Code and it is our view here that as a result of chauvinistic tendencies and the predominance of male adjudicators, such practice will continue unless there is an amendment in the law.

There is the further practice followed by several magistrates which require the production of a person who is of some social standing in the community to stand as surety. To this end, magistrates normally demand for a surety with

a fixed abode or address and who is in regular employment. Businessmen and self-employed persons are also acceptable as sureties.

Not only do magistrates demand that a surety be in regular employment, but they also emphasize that he be of "high standing". His character is also considered. A surety whose character is suspect may be rejected.

The law as it is, is to the effect that magistrates should not concern themselves with the character of a surety, but rather with his financial resources. It was strongly put forward in R v Badger,⁹ that the Magistrate, in determining the surety, is not to assume powers not given by law, especially powers to investigate the surety's political beliefs.

Lastly, there is also the requirement of an independent surety. A person standing as a surety must not be subjected to any sort of duress; he must come voluntarily.¹⁰

In assessing the suitability of sureties, the magistrates in court merely hold an inquiry on oath into their fitness and hardly carry out a physical examination with the Police to determine whether they are telling the truth or not.

The grounds upon which a Magistrate has the power to refuse to accept a surety must be such as are valid and reasonable in the circumstances of each case as it arises. It is no disqualification in a surety that he is a relation.

The pecuniary sufficiency of sureties is not the sole criterion for determining the sufficiency of the security, but also, it is an important consideration for the Magistrate to ascertain the extent of the power which a surety can exercise over the accused.¹¹ The reason for this is that duties of a surety are not only confined to the payment of a forfeited recognisance, but it is also:

"essential that the person giving bail should be interested in looking after and, if necessary, using the powers he has to prevent the accused escaping."¹²

3.4 DETERMINATION OF NUMBER OF SURETIES AND AMOUNT OF BAIL

It is difficult to ascertain what standards are applied by magistrates in determining the amount of bail because of the different customs which appear to be the basis in setting of bail. Observedly, in practice, the amount of bail ranges from K100.00 on the accused's own recognisance to as much as K20 000.00 with five sureties in the like sum.

The nature of the offence and circumstances surrounding the charge are the primary factors taken into account when setting the bail sum, since the evidence of the crime is probably the only information magistrates possess in the majority of cases.

The nature of the offence is of great importance in granting bail. This is so because the more severe an offence, the higher the punishment will be and the more likely an

accused is to abscond. Case records show that accused persons charged with serious offences such as attempted murder and rape are generally required to enter into recognisance in the sum between K3 000.00 and K5 000.00, in addition to two "working sureties" in the like sum. In comparatively trivial offences such as Disorderly Conduct, magistrates accept a recognisance from the accused in the sum of K500.00 without sureties. The surrounding circumstances of the charge will also determine the amount of bail set. For example, in crimes involving extreme violence or injury or theft of a large sum of money, bail will be much higher than in less grave circumstances. This can be illustrated by two cases. In the first case, a Kitwe businessman charged with obtaining money by false pretences was granted cash bail of K15 000.00 with five sureties in the like sum. He was alleged to have swindled the former Nchanga Consolidated Copper Mines out of nearly half a million Kwacha.¹³ In another case, where the accused was charged with the same offence, the Magistrate released him on bail in the sum of K100.00 with one surety in the like sum. He was alleged to have obtained K1 358 000.00 by false pretences.¹⁴

The amount of bail, therefore, seems dependant on the individual Magistrate before whom an accused person appears.

3.5 VARIATIONS IN CONDITIONS OF BAIL

Perusal of case records reveal widespread variations among

magistrates in the imposition of conditions of bail and surety requirements. Illustrations may be given. In one instance, a Magistrate, in the Ndola Court, demanded bail in the sum of K100.00 with two sureties in the like sum from an accused person who was charged with theft involving K36.00. Yet, another Magistrate set bail at K50.00 with one surety in a case of theft involving K138.00. The accused facing the charge involving the lesser amount was confronted with stiffer conditions of bail than the other who stole a larger amount.

Another illustration may be given. In an unreported case in 1987 of Rajendra Sharma, a Magistrate set the bail sum for one of the accused at K150 000.00 with four sureties of K50 000.00 each. The other accused persons were released on bail of a much lesser sum.

Some magistrates, for instance Honourable Chilufya of the Lusaka Magistrate's Court, declared that before releasing an accused person on bail, he requires a written letter of reference from the proposed surety's place of work.

Rarely do magistrates release accused persons on their own recognisance without demanding sureties. This is because they are desirous of having independent security from that of the accused person. Only in less serious offences as Careless Driving or Disorderly Conduct do magistrates dispense with the requirement of sureties.

The above variations in bail conditions among various magistrates, in their different patterns and policies, clearly show the little effort put into achieving an over-all consistency. All this arises due to the fact that the Criminal Procedure Code has accorded magistrates broad discretion in determining bail conditions, with due regard to the circumstances of the case.

3.6 BREACH OF BAIL

Where the accused person fails to surrender at the appointed time and place, he will have committed a criminal offence, unless he had a reasonable excuse and if he had made an attempt to surrender to custody as soon as reasonably practicable afterwards.¹⁵

The Magistrate can fine and imprison the defendant for his non-attendance.

The CPC provides that when a person jumps bail, not only does he forfeit his recognisance, but the court may also issue a warrant of distress for the amount mentioned in such recognisance or imprison the accused person and his surety or sureties, for any term not exceeding six months, unless the amount on the recognisance is sooner paid or levied.¹⁶

It is this provision in the CPC which magistrates feel they would not be inclined to enforce in certain cases involving women sureties, especially elderly women and mothers.

Magistrates would therefore much prefer to deny such persons their right to act as sureties.

However, the Magistrate of a case at hand has the discretion whether or not to order the estreat of a recognisance.¹⁷ If the accused person fails to answer his bail, the surety may be required to forfeit his recognisance. The surety should be informed by the court that it is considering forfeiting his recognisance and should be given an opportunity to attend and explain his case. The onus of proving an absence of culpability rests on the surety and the court will start with the assumption that the whole sum should be forfeited.

In Chiteta v the People,¹⁸ an appeal to the High Court was made against a Magistrate's order of forfeiture. On appeal, it was held that:

"A surety must be given an opportunity to explain his conduct in relation to the alleged breach. Where a breach of the conditions of a recognisance is alleged, the prosecution must prove beyond reasonable doubt that the surety was negligent in, or that he had deliberately refrained from, exercising his responsibilities in order to secure the attendance of an accused person at court."

There was no such evidence in this matter to support the action taken against the surety. In the face of this misdirection, it was not possible to uphold the order of

forfeiture of the surety's recognisance and hence the appeal was allowed.

It is clear that in common law, an agreement by an accused person with his bailee to indemnify him against liability on his recognisance, is illegal as it deprives the public of the security of bail and amounts to criminal conspiracy.¹⁹

Lord Avestone, C J, rejecting the contention that bail is a mere contract of suretyship and that an agreement to indemnify bail is not illegal, said:

"If that was so, indemnity to bail would make (a surety) utterly careless with regard to seeing that the accused was forthcoming on his trial and it is obvious that criminals possessed of means would frequently abscond from justice."²⁰

However, in Zambia, there exists no effective system of re-arresting accused persons that "jump" bail, for the reason that the Police do not double check the particulars of the accused persons or their sureties, with the resultant effect that accused persons, in most cases, give false names and places of work and non-existent residential addresses. For instance, in the unreported case of The People v Greenwell Chishala and Dominic Chisonta, the accused persons were charged with the theft of a motor vehicle. The first accused jumped bail and all efforts to re-arrest him were

futile as he did not reside at the alleged residential address he furnished to the Police.

3.7 DISCHARGE OF SURETIES

Where a surety wishes to be relieved of his obligations, it may be done in three ways:

- (i) A surety may apply to the Court, by way of complaint, to be relieved of his obligation attaching thereto at any time before his duties are fulfilled, ²¹ where the principal has breached or is about to breach the terms of the recognisance imposed on him. This bond may be discharged wholly or so far as it relates to the applicants. On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him;
- (ii) he is discharged by bringing the accused before the Magistrate at the date and time stated in recognisance. In this instance, the Magistrate is bound to discharge the surety and he exercises no discretion in the matter. But the accused is not barred from offering new sureties once the original ones have been so discharged, ²² and
- (iii) the death of the surety automatically dis-

charges him and his estate from the bond. Also, when any surety to a bond becomes insolvent or any bond is forfeited, the Court by whose order such bond was taken may order the person from whom such security in accordance with the direction of the original order and if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order.

3.8 ARE THE REQUIREMENTS OF SURETIES A CRUCIAL NECESSITY IN CRIMINAL LAW?

We have already seen that in addition to the power to order a person to be bound over in his own recognisance to keep the peace and be of good behaviour, magistrates require other people to stand as sureties for his own behaviour. This places on the defendant an extra burden of finding other persons who will stand by him. Injustice may be done to a person if he is required to find sureties and he is thus friendless and does not know anyone who can stand surety for him. In these circumstances, he will be committed to prison in default of finding the sureties.

The possible drastic effects of imposing an order requiring a person to find sureties was recognised by Denning, L J, in Everett v Ribbands,²³ where he expressed the view that "sureties" should only be required where there has been a threat by words or conduct to breach

the law of the land or to do something which is likely to result in a breach, and also a reasonable fear that this threat will be carried into effect. The bind over must be based on something actually done by the defendant such as threats of violence, interference with the course of justice or other conduct which causes an apprehension of a breach of law. In other words, the test must be most strict in the sense that mere apprehension of future conduct should be insufficient. There must already have been some untoward conduct. In practice, however, a bind over, even without sureties, is never made without evidence of some form of reprehensible conduct and in less serious offences.

The issue of the necessity of sureties arises as a result of the question of whether a surety has the power of bringing an accused person before a court of law for trial. This is so where there are person(s) standing as sureties for the accused person.

In Zambia, there are no effective means of compelling sureties to produce the accused person before a court of law. In determining whether a person is fit to stand as surety, the court merely considers whether one is of sufficient substance, that is, financially sound, solvent and of good character and status; furthermore, whether he is independent and in employment. This therefore means that the surety is held responsible in so far as the bail sum stated in the recognisance is not. Besides, the courts will not be able to hold the surety liable for punishment

unless it can be proved that the surety assisted the accused person to escape. This, however, is difficult as the court will rely entirely on evidence from the surety.

It is at this point that one wonders whether sureties are really necessary since they do not contribute much in preventing an accused person from absconding and, if they should be required, a more effective law on sureties should be passed to ensure that not only will a sum of money be forfeitted, but someone held responsible.

It is for such reasons that the courts have recently allowed relatives to stand as surety for one another, while others claim it to be inadvisable as it may, naturally, result in the surety assisting the accused person to escape in a situation where it is evident that the accused person is losing his case and which may result in his conviction, especially in serious offences. Despite this view, it is submitted here that this should be all the more reason for allowing family members, especially mothers, to act as sureties for their children arrested for criminal acts because it can be conceived, in most cases, that an accused person will not jump bail if he feels that his mother is likely to suffer hardships.

There is a need, therefore, for a law requiring something other than a sum of money for bail which will compel accused persons released on bail to appear for trial. It is clear that criminals have no regard for a sum of money, how-

ever high, when their lives are at stake. It is therefore the writer's opinion that money left as a deposit should not be the instrument compelling the accused person to appear for trial.

In this Chapter, we have tried to show that the lack of clear guidance in the law as to the determination of the amount of bail and sureties is responsible for the difficulties that accused persons encounter in producing satisfactory surety and as such, they end up being remanded in custody.

In the next Chapter, we conclude and give proposals for reform.

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CHAPTER FOUR : CONCLUSION AND PROPOSALS FOR REFORM

4.1 CONCLUSION

This paper has attempted to acquaint the reader with the difficulties arising in the Laws of Bail in Zambia and, in particular, to how magistrates exercise their discretion in determining whether or not to grant bail and in assessing the suitability of sureties.

Since there is no specific legislation governing bail in Zambia, magistrates have followed the English Common Law Rules in this regard. However, at Common Law, there are only two main reasons for refusing bail before conviction, namely that the accused person may abscond trial and the likelihood of him committing further offences while on bail. Notably, the only written guidelines as to the Laws of Bail in Zambia are the Magistrate's Handbook and a few sections of the Criminal Procedure Code.

The CPC vests very broad discretion in magistrates to determine whether or not to grant bail and the conditions to impose thereon. Each Magistrate may come up with his own practice to determine applications for bail.

From the above, it is noticed that magistrates or judges think along different lines from one another. Others treat bail more seriously.

One author stated that because of the discretion enjoyed by magistrates:

"Excessive Bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."¹

There is great potential for abuse as a result of this unfettered discretion. That is, many accused persons may be remanded in prison because they are unaware of their right to ask for bail. It has been noticed, as previously stated by the writer, that magistrates hardly ever inform accused persons of their right to apply for bail, especially in serious cases. Therefore, bail, being a privilege in Zambia and not a right, is like most privileges available. On the whole, it applies more to the rich and works against the economically weak.

However, the Criminal Procedure Code that governs the Laws of Bail in Zambia has adopted the English rule which has since undergone extensive change and modification, whereas ever since the inception of the CPC, it has not had any major revisions. Henceforth, our present law does not reflect current trends.

In addition, it is questionable whether magistrates actually take into account any of the criteria laid down in the Magistrate's Handbook concerning the exercise of discretion. When granting bail, there is therefore discrimination outside that permissible by law. Arrestees from high density areas or compounds, as they are commonly referred to, become victims of circumstances and are not

often granted bail on the grounds that they have no fixed abode. Such persons do indeed have fixed abodes, but the intricacy of streets and roads in these areas, coupled with the lack of street names, makes the task of tracing bail jumpers extremely difficult. Magistrates therefore end up sympathising with the Police and pass decisions to supplement Police inefficiency.

Other problems faced in bail are the workings of the Subordinate Court before which bail applications are usually made. These are the lower echelons of the judicial hierarchy manned by magistrates of whom the majority are not lawyers. It has been noticed that it takes five to ten minutes for such magistrates to determine whether or not to grant bail and the conditions to impose thereon. This in, itself, shows that such decisions are not well reasoned and cannot possibly take into account all the facts of the case.

Notably, many of the factors regarded by magistrates in granting bail are aimed in actual fact at preventing future criminality, based on mere suspicion, and not on concrete facts. As one London Magistrate rightly pointed out:

"When it comes down to it, the granting or refusal of bail can never be based on anything more than a Magistrate's hunch..."²

Lastly, in considering a bail application, magistrates practice discrimination with regard to sureties in many

respects. For instance, they normally demand working sureties and will, in certain circumstances, not allow women to act as sureties by the mere fact that they are women. This clearly demonstrates the difficulties that accused persons encounter in obtaining suitable sureties before magistrates, as each Magistrate considers various factors more important in assessing the suitability of the sureties. While some consider the financial capacity of a surety as the major qualification, others advance the character of the surety. However, the author maintains that the proximity of sureties to the accused person should be the basis for such admission. That is, the power of control of a surety over an accused person should be the key factor in determining whether a surety should be accepted or not.³

It is the submission here that the financial capacity of a surety as an important characteristic should be totally disregarded. This is so because, in the event of an accused person absconding, a surety would readily allow his bail sum to be estreated to the State where there is an agreement with the accused person to be reimbursed. In Zambia, despite standing as a surety, one knows that he may not be arrested by the Police unless it can be proved that he helped the accused person "jump" bail.

It is recommended, therefore, that the court should first consider whether a defendant may safely be released without sureties and only if it concludes that some additional

guarantee of his appearance seems necessary, should the court consider a requirement to find sureties. Sureties should not be required as a matter of course.⁴ It is hoped that the introduction of a Bail Information Scheme will enable sureties to be dispensed with more often.

4.2 PROPOSALS FOR REFORM

As one author points out, the resolution in criminal procedure of the rights of the individual, with the legitimate interests of the State, requires the maintenance of a delicate balance. There is almost universal recognition of the impropriety of punishing - and custody is indeed punishment, no matter what its name - one who is merely accused and who has not been, and may indeed not be, convicted.

Zambia is a typical example of a country that cannot raise a banner in support of this statement. The writer seeks to propose for law reforms to bring Zambia closer to the recognised universal order on the issue of jail before trial.

The first problem that surrounds the issue of bail is lack of legislation to provide adequate guidance to magistrates in the exercise of their discretion. Parliament, therefore, should enact a law which should have clearly established rules and principles to govern magistrates in determining the amount of bail and their criteria upon which bail decisions are based. It will have the effect of removing, to a great extent, the discretion enjoyed by magistrates on

issues of bail by curbing their activities. It is also suggested that magistrates should keep clearer records of bail applications and they should be required to give reasons underlying their bail decisions.

Notably, the Laws on Bail in Zambia tend to deny the constitutional right of personal liberty and presumption of innocence. Therefore, it is proposed that the suggested legislation to be enacted should make it mandatory for magistrates to grant bail in all cases, with the exception of such crimes as murder and crimes punishable by life imprisonment. This will also have the effect of eradicating the abuse of discretionary powers.

It is well known that the majority of people in Zambia are ignorant of their right to apply for bail in all circumstances, let alone their right to appeal to the High Court against bail decisions. This is so because the Magistrate's Court rarely ever informs them of this right, or otherwise they are genuinely confused about court procedure and the privilege of bail. In such instances, it is suggested that it be a mandatory requirement for magistrates to notify accused persons, particularly the unrepresented ones, of their right to apply for bail and to appeal if bail is denied. From this, it is understood that the onus of applying for bail should not rest on the accused person, but rather on the court. Such a system should provide for a faster hearing of appeals than is the position today because unnecessary detention defeats the whole purpose of bail.

In the absence of detailed research, it becomes difficult to evaluate the validity of any of the specific Police objections to bail. Since the reasons in the majority of Police objections to bail possess little merit and are frequently raised by the Police, there is need for a Magistrate to subject these reasons to close scrutiny. To this end, it is suggested that it be a mandatory requirement for the Police to express their objections to an application for bail with much greater clarity and detail than is the case at the moment.

We have noted that magistrates in Zambia possess virtually no information about the accused person's "community ties" and also possess very little details of the alleged offence when making bail decisions. It is therefore suggested that there must be improvement in the amount and quality of the information available to magistrates about an accused person(s) community ties as well as the alleged offence when making bail decisions.

A constitutional provision will also have the effect of removing, to a great extent, the discriminatory effects on those accused persons when looking for sureties. Because magistrates will be compelled to grant bail in less serious offences, it is submitted that they will be reluctant to be so stringent as regards sureties. Furthermore, if an accused person's own recognisance is seriously considered, requirement for sureties may be dispensed with altogether since it has been established that sureties may not be com-

pelled to secure the accused person's attendance at the time and place so specified. All that will occur is that the surety's bail sum will be forfeitted to the State.

An important aim should be to avoid remanding so many suspects in custody. The negative effect on the State of remanding so many suspects is obvious. The State incurs heavy financial costs in feeding and keeping those that the courts deem fit to remand in custody.

Alternatively, it is also suggested that there be a system whereby accused persons may be brought before a court within a shorter period of time from his arrest.

It is the firm belief of the writer that the proposals made in this paper will assist in alleviating some of the problems not only faced by magistrates, but also by accused persons in matters of bail.

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FOOTNOTES FOR CHAPTER FOUR

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