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IN THE HIGH COURT OF ZIMBABWE
HELD AT HARARE

CASE NO.HCH...../24
REF CRB NO.ACC 81/24

ALBERT DZIKAMAYI CHEKURE

APPELLANT

AND
THE STATE

RESPONDENT

BAIL APPEAL MADE IN TERMS OF RULE 91 OF THE HIGH COURT
RULES SI 202/2021 READ TOGETHER WITH SECTION 121 OF THE
CRIMINAL PROCEDURE AND EVIDENCE ACT [CHAPTER 9:07]

TAKE NOTICE that the Appellant hereby makes an appeal against the decision of the Magistrate Court as per Mrs Chichera Esquire denying him bail which was made on the 6th of May 2024.

FURTHER TAKE NOTICE that the attached statement will be used in support of this Bail Appeal.

DATED AT HARARE ON THIS ^{15th}.....DAY OF MAY 2024.




TENDAI BITI LAW
HMB CHAMBERS
28 Rowland Square
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AND TO: THE REGISTRAR
High Court of Zimbabwe
HARARE

AND TO: CLERK OF COURT

Magistrates Court(Criminal)

Rotten Row

HARARE

AND

TO :NATIONAL PROSECUTING AUTHORITY

Respondent's Legal Practitioner's

101 Kwame Nkrumah Ave

HARARE

**IN THE HIGH COURT OF ZIMBABWE
HELD AT HARARE**

**CASE NO.HCH...../24
REF CRB NO.ACC 81/24**

ALBERT DZIKAMAYI CHEKURE

APPELLANT

**AND
THE STATE**

RESPONDENT

**BAIL STATEMENT MADE IN TERMS OF RULE 91(1) OF THE HIGH
COURT RULES SI 202/2021**

1. The Appellant is Albert Dzikamayi Chekure he is thirty (31) years of age. His National Identity number is 07-225733G07.
2. He resides at No.11062 Glenview 7, Harare. His address of service for the purposes of this Bail Appeal is care of his Legal Practitioners of record Tendai Biti Law Chambers.
3. The Appellant is employed by the City of Harare in the Water and Sewer department and his job is that of a systems operator who is responsible for recording data on individual household usage of water and capturing the same data in the system.
4. He's usual work address is Townhouse Julius Nyerere Way Harare. He has been employed with the City of Harare since 2019 to date and earns a monthly salary of 3000 ZiG.
5. The Appellant is married to Rumbidzai Madzinga since 2020 and they have two minor children namely Kimberly Chekure born on the 31st May 2017 and Makatendeka Chekure born on the 22nd of October 2022.

6. On the 18th of April 2024, the Appellant was arrested by police details and charged for contravening section 5(1)(a)(ii) of the Exchange Control Act Chapter 22:05 as read together with 4(1)(a)(i) of the Exchange Control Regulations SI 109 of 1996(hereinafter referred to as the Exchange Control Regulations)
7. Attached herein as **annexure A** is the State's form 242 together with a statement containing the factual allegations against the Appellant which are that;

“Complainant in this case is the State represented by Bianca Masvaure a detective Sergeant stationed at CID CCD Commercial crime Division Northern Region.

Accused in this case is Albert Dzikamai Chekure aged 31 years residing at house number 11062 Glenview 7, Harare and is employed at the City of Harare.

On the 18th day of April 2024 a team of Detectives were on surveillance and they spotted accused carrying transactions of illegal foreign currency dealing at corner Angwa street and Nelson Mandela.

*The team approached the accused person and Bianca Masvaure requested accused to transfer buddie airtime for ZiG130,00 equivalent to USD10,00. She then gave the accused USD10 trap money serial number **PH315203340A***

Accused person then transferred the airtime from his ecocash account number 0783788515 to Benjamin Nyahema ecocash number 0774337649

This resulted to the arrest of the accused person and subsequent recovery of A Huawei cellphone embedded with a buddie simcard 0783788515 used by accused to transact.

Accused's act was unlawful"

8. The Accused person was brought in Court number 6 at the Magistrates Court at Rotten row on the 20th of April 2024 where he was remanded. He was not represented by any Legal Practitioner but orally made an application for bail.
9. The Magistrate Court presided over by Magistrate Mrs Chichera Esquire on the 6th of May 2024 declined his application for bail on the basis that; (i)the Accused person was facing a serious offense and that if he were to be convicted he would be sentenced to a lengthy custodial sentence ii) the Court also accepted the State's position that the State had overwhelming evidence against the Accused person and that he was likely to abscond if released on bail.
10. Further the Court also made a political ruling to the effect that the Government of the Republic of Zimbabwe had just introduced a new currency ZiG and that the Accused actions were intended to destabilize ZiG and the economy and to cause disaffection to the ZiG by members of the public.
11. Accused therefore remains in custody and is due to appear for further remand at the Harare Magistrate Criminal Court at Rotten row on the 21st of May 2024.
12. For the sake of compliance with the rules, the Accused was arrested by the Commercial Crimes Division whose reference is DR 77/04/24/04/24. The Criminal Record Book Number in this case is CRB ACC81/24 and the Prosecutors Number is 598/24.
13. The Appellant seeks that the decision of the Court a quo be set aside and that he be granted bail.
14. The Appellant's grounds of appeal are the following;

GROUND OF APPEAL

- a. That his liberty should not have been deprived of because the facts do not disclose a cause of action and that the charge is non-existent.
 - b. The Court a quo grossly erred in ignoring that Bail is a Constitutional Right and that the Accused person ought to have been granted bail.
 - c. The Court a quo grossly erred in ignoring that it was in the interest of justice to release the Accused person
 - d. The Court a quo grossly erred in ignoring that none of the factors justifying the refusal of bail which are listed in section 117(2) existed
 - e. The Court a quo misdirected itself in its findings
15. We now proceed to provide the Details to the grounds of appeal.

DETAILS

- A. That his liberty should not have been deprived of because the facts do not disclose a cause of action and that the charge is non-existent**
16. The allegations against the Appellant are that he dealt with foreign currency in breach of 4(1)(a)(i) of the Exchange Control Regulations SI109 of 1996.
17. The factual allegations being that the Appellant, purchased from detective Sergeant Bianca Masvaure the sum of Ten (10)US dollars in consideration of buddie airtime to the value of 130,00ZiG.
18. Section 4(1)(a)(i) of the Exchange Control Regulations 1996 reads as follows;

“Subject to subsection (3), unless permitted to do so by an exchange Control authority

(a) no person shall, in Zimbabwe

(i) ***buy any foreign currency from or sell any foreign currency to any person other than an authorised dealer,***"

19. It is clear from section 4 of the Exchange Control Regulations 1996 that what is being proscribed is the purchasing or selling of foreign currency without approval from an exchange control authority.

20. Put in simple terms, no one may transact in foreign currency in Zimbabwe without exchange control authority.

21. The question which arises is what is foreign currency?

22. The answer is provided in section 2 of the Exchange Control Regulations 1996. Section 2 of the Exchange Control Regulations defines foreign currency as follows;

"foreign currency note or coin- means any currency, other than Zimbabwean currency or gold, which is legal tender in a country other than Zimbabwe."

23. Further in Section 2 of the Exchange Control Regulations, 1996 a foreign currency note or coin is defined as follows;

"foreign currency note or coin" means any currency, other than Zimbabwean currency or gold, which is legal tender in a country other than Zimbabwe."

24. Put in simple terms foreign currency simply refers to legal tender of another country.

25. Thus, it is unlawful for any Zimbabwean to transact and deal in foreign currency defined to mean the legal tender of another country without exchange approval.

26. However, the US dollar that the Appellant dealt with is not foreign currency in Zimbabwe rather it is legal tender in Zimbabwe.

27. Section 44A of the Reserve Bank Act [Chapter 22:15] reads as follows;
- “The Minister may, in regulations made under section 64, prescribe that, subject to such conditions as may be specified in the regulations, a tender of payment in any currency other than Zimbabwean currency shall be legal tender in all transactions or in such transactions as may be specified in the regulations”*
28. Effectively through Section 44A of the Reserve Bank Act above, the State through the Minister of Finance and Economic Development (as he then was) from 2009, introduced the US dollar as a currency and legal tender in Zimbabwe.
29. Once it is accepted that the US dollar is a currency and is legal tender in Zimbabwe, it is not foreign currency for the purposes of use in Zimbabwe by way of Section 44A of the Reserve Bank Act as read together with Section 2 of the Exchange Control Regulations.
30. If the US dollar in Zimbabwe is not foreign currency, then the Appellant and others like him cannot be prosecuted in breach of Section 5 of the Exchange Control Regulations read together with Section 4 of the Exchange Control Act.
31. Due to the complexity of the issue and the point the Appellant makes and given its national importance, we provide the following, a background to this Honourable Court so that it makes an informed decision;

The history of the US dollar as legal tender in Zimbabwe.

32. It is common cause that the Zimbabwean dollar or more appropriately the bearer cheque (as it then was called), was ravaged by hyperinflation between 2006 to 2009 prompting the authorities to take decisive measures.

33. Thus, in the national budget that was presented by the Minister of Finance on the 29th of January 2009 the Government of Zimbabwe allowed the US dollar and the Rand to become legal tender in Zimbabwe.
34. In March of 2009 the dollarisation of the Zimbabwean economy that had been announced through the 2009 national budget was then made legal through the Finance Act No.2 of 2009. Section 17 of the Finance Act No.2 of 2009 introduced the multicurrency system in Zimbabwe through the amendment of the Reserve Bank of Zimbabwe Act by the insertion after Section 44 of Section 44A .
35. The amendment also deemed certain currencies to be legal tender. This basket of currencies include the US dollar, the Euro, the British pound ,Chinese Yen, the South African Rand and the Botswana Pula. The aforementioned amendment effectively made certain foreign currencies legal tender in Zimbabwe.
36. Through Statutory Instrument 70 of 2015, namely the Reserve Bank of Zimbabwe (Demonetisation of Notes and Coins) 2015 the President of the Republic of Zimbabwe in terms of Section 41(2) and Section 43 of the Reserve Bank of Zimbabwe Act demonitised Zimbabwe Notes and Coins therefore effectively bearing the Zimbabwe currency as legal tender in Zimbabwe.
37. Thus, between 29th of January 2009 up until the 20th of February 2019 the US dollar was local currency and legal tender in Zimbabwe.
38. Any doubt about this was confirmed by the Exchange Control (Amendment) Regulations ,2017 (No. 5) which were published as Statutory Instrument 122A of 2017.
39. SI 122A of 2017 amended the definition of currency in Section 2 of the Exchange Control Regulations of 1996 published in Statutory Instrument 109 of 1996 by introducing the following definition;

“currency” - (a) means the coin and paper money of Zimbabwe or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;”

40. The above definition makes it clear that currency in Zimbabwe means the coin and paper money of Zimbabwe or the foreign currency that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue.
41. If Zimbabwean currency includes foreign currency, dealing with the same cannot be an offence.
42. In other words when Appellant does what he is alleged to have done on the 18th of April 2024 he did not break any law. For in fact, he was transacting in local currency which is defined to include foreign currency.
43. The above definition of currency as introduced by SI 122A of 2017 still remains in our statute book as of today. This therefore is the end of the matter.
44. However, for the sake of completion, we proceed with our background;
45. On the 22nd of February 2019, the President issued the Presidential Powers (Temporary Measures) (Amendment of Reserve Bank of Zimbabwe Act and Issue of Real Time Gross Settlement Electronic Dollars (RTGS Dollars)) Regulations, 2019 published as SI 33 of 2019. These regulations introduced an electronic currency known as RTGS dollar which was on par with the US dollar.
46. SI33 of 2019 effectively restored the local currency which had been demonitised in 2009 .SI 33 of 2019 however, it did not outlaw the use of foreign currency as legal tender in Zimbabwe.

electronic currency prescribed for the purposes of section 44C of the principal Act, that is to say to the RTGS dollar;

(b) the above mentioned bond notes and RTGS dollars are at par with the Zimbabwe dollar on and after the second effective date, that is to say each bond note unit and each RTGS dollar is equivalent to a Zimbabwe dollar, and each hundredth part of a bond note unit and each hundredth part of a RTGS dollar is equivalent to a Zimbabwean cent; Finance (No. 2) 463 2019 No. 7

(c) references to the currency of Zimbabwe shall, with effect from the second effective date, be construed as references to the form of legal tender and the electronic currency with which the term "Zimbabwe dollar" is, in terms of paragraph (a)(i) and (ii), coterminous.

51. Despite the existence of Section 23 of the Finance Act No.2 of 2019, the definition of currency found in Section 2 of the Exchange Control Regulations SI109 of 1996 was not amended. It remained as it was.
52. In other words there was never an attempt to reconcile the dedollarisation process effected by the Finance Act No.2 of 2019 and the hitherto existing system.
53. **The left hand did not know what the right hand was doing. Or more appropriately the left hand did not know what the right hand had done before.**
54. Despite the passage of the Finance Act No.2 of 2019 ,on the 27th of September 2019 ,the President published the Exchange Control (Exclusive Use of Zimbabwe Dollar for Domestic Transactions) Regulations, 2019 which were published as SI212 of 2019.
55. Section 3(1) of SI212 of 2019 read as follows;-

“Exclusive use of Zimbabwean currency for domestic transactions

3. (1) Subject to section 4, no person who is a party to a domestic transaction shall pay or receive as the price or the value of any consideration payable or receivable in respect of such transaction any currency other than the Zimbabwean dollar.”

56. The dedollarisation process was a failed process and the chief architect of the failure of the dedollarisation was the Government itself which allowed the US dollar as legal tender in many transactions involving the same.
57. Thus, exceptions were made in the law to the following—a) the payment of carbon tax, b) third party insurance c) road access fees for foreign registered vehicles d) electronic fees charged by or to transborder logistics e) payment to local insurance companies for bond currencies or bonds f) payments of duty at ports of entry g) the payment of fuel
58. These exceptions were effected by Section 4 of SI 212 of 2019. Further in roads in the dedollarisation agenda, were made through various amendments to the Exchange Control (Exclusive use of Zimbabwean dollar for domestic transactions) SI 212 of 2019.
59. First was amendment No.1 published as Statutory Instrument 61 of 2020, which allowed payment in foreign currency of emergency and normal passports.
60. In amendment No.2 which was published as SI 85 of 2020 published as the Exchange Control (Exclusive Use of Zimbabwe Dollar for Domestic Transactions) (Amendment) Regulations, 2020 (No. 2), drastic amendments were made to the dedollarisation agenda.
61. Section 6 (2) of SI85 of 2020 stated that:-

“(2) Notwithstanding these regulations, any person may pay for goods and services chargeable in Zimbabwe dollars, in foreign currency using his or her free funds at the ruling rate on the date of payment.”

62. The net effect of Amendment No.2 namely SI 85 of 2020, was to effectively restore the US dollar and the South African Rand as legal tender on one caveat that the money was coming from free funds.
63. SI 85 of 2020 is still law. If the Appellant were to be prosecuted it would have to be shown that the Ten (10) US dollars herein received was not from free funds.
64. Surely this is an absurd status *quo*.
65. In amendment No.3 of SI 212 of 2019 which was published as Statutory Instrument 268 of 2020 on the 6th of November 2020, foreign currency could be paid in relation to insurance business conducted in foreign currency or pensions and provident funds business whose contributions were made in foreign currency in terms of an enabling law.
66. Amendment No.4 was published on the 27th of November 2020 as Statutory Instrument 280 of 2020 namely the Exchange Control (Exclusive Use of Zimbabwe Dollar for Domestic Transactions) (Amendment) Regulations, 2020 (No. 4).
67. In Section 6 of those Regulations the law made it permissible to charge and to tender foreign currency in payment of the following transactions;

” 6. (1) Notwithstanding these regulations, it shall be permissible to charge and to tender foreign currency in payment for the following transactions— (a) international travel insurance; (b) motor insurance for vehicles in transit; (c) customs bond insurance; (d) bank cash in transit; (e) third party motor insurance payments for foreign registered

vehicles; (f) safari operators insurance; (g) export credit insurance; (h) importers and exporters on cost, insurance and freight; (i) exporters' insurance, including mining houses and tobacco merchants;

68. On the 22nd February the same day that the Government published SI 33 of 2019, it also published the Exchange Control (Amendment) Regulations, 2019 (No. 6) as SI 32 of 2019.
69. Section 2 of SI32 of 2019 had a similar definition of currency as contained in Statutory Instrument 122A of 2017.
70. This effectively means that if currency is defined to include a foreign currency that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue, the Appellant cannot be charged for dealing in US dollars.
71. Section 2 of SI 32 of 2019 defines currency as follows
“currency”— (a) means the coin and paper money of Zimbabwe or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;”
72. The charge is superfluous.
73. On the 24th of July 2020, through Statutory Instrument 185 of 2020 being the Exchange Control (Exclusive Use of Zimbabwe Dollar for Domestic Transactions) (Amendment) Regulations, 2020 (No. 3), the Government of the day officially abandoned the dedollarisation process by impliedly allowing trading in US dollars.
74. Section 7 of SI 185 of 2020 allowed a dual pricing and displaying system in the following manner;-
“7. (1) Any person who provides goods or services in Zimbabwe shall display, quote or offer the price for such

goods or services in both Zimbabwe dollar and foreign currency at the ruling exchange rate.

(2) Any person who contravenes subsection (1) shall be liable to— (a) a category 1 civil penalty if the contravention is completed but irremediable; or (b) a category 4 civil penalty if the contravention is a continuing one.”

75. SI 185 of 2020 was therefore the reintroduction of foreign currency through the backdoor.
76. Put simply it was backdoor dollarisation.
77. Thus, the existence of Statutory Instrument 185 of 2020 coupled with the definition of currency and foreign currency in section 2 of the Exchange Control Regulations 1996, makes it impossible for the State to bring the charges that have been brought against the Appellant and many others.
78. Put simply the State can't on one hand allow transaction in foreign currency and on the other hand proscribe transacting in foreign currency.
79. The law does not allow the State to approbate and reprobate.
80. This clearly will be unconstitutional and in breach of the principles of the rule of law and constitutionalism, guaranteed and fortified particularly in Section 2,3 and 56(1) of the Constitution of Zimbabwe.
81. The implied dedollarisation process was reproduced in the Presidential Powers (Temporary Measures) (Financial Laws Amendment) Regulations, 2021 which were published as SI 127 of 2021 on the 26th of May 2021.
82. Section 3(3) of SI 127 of 2021 provided that *“a natural or legal person shall be guilty of a civil infringement if he or she, being a seller of goods or services not authorised by law to charge for them*

exclusively in foreign currency, refuses to allow any buyer thereof to tender payment for them in Zimbabwe dollars at the ruling exchange rate.”

83. Clearly the above provision permitted the pricing of goods in foreign currency but only criminalised the refusal to accept local currency.
84. This is once more evidence of backdoor dollarisation.
85. The lawmakers through the above statutory instruments impliedly allowed the use of foreign currency in Zimbabwe.
86. However, they realised that they were some ambiguities and uncertainties that affected the market.
87. Which is why on the 27th of June 2022, they published Statutory Instrument 118A of 2022 being the Presidential Powers (Temporary Measures) (Amendment of Exchange Control Act) Regulations, 2022 which in section 2 read as follows;

“2. The Exchange Control Act [Chapter 22:05] (“the principal Act”) is amended in section 11 (“Civil penalty orders”) by the insertion of the following subsections after subsection (2)— “(2a) The provisions of the Schedule, insofar as they expressly or impliedly permit the settlement of any transaction or payment for goods and services in foreign currency, shall be valid for the period of the National Development Strategy 1 (the national economic plan for the period from January 2021 to December 2025, published on the 16th November, 2021)”

88. The use of the words **express** or **implied** in the above section means that the Government was accepting that its position on dollarisation may have been sneaky and unclear.

89. To the extent that NDS1 was ending in 2025, the Government knew that it had to address the uncertainties of the multi-currency regime.
90. It did so in Statutory Instrument 218 of 2023 being the Presidential Powers (Temporary Measures) (Amendment of Exchange Control Act) Regulations, 2023, the following major provision was made in section 2 which reads as follows;
- “2. The Exchange Control Act [Chapter 22:05] is amended in section 11 (“Civil penalty orders”) by the repeal of subsection (2a) and substitution of—*
*“(2a) The provisions of the Schedule, in so far as they **expressly** or **impliedly** permit the settlement of any transaction or the payment for goods and services in foreign currency, shall, notwithstanding Statutory Instrument 142 of 2019, be valid until the 31st December, 2030.”.*
91. The above provision means that the multi currency regime was extended to the 31st of December 2030.
92. SI 218 of 2023 becomes the biggest expression of the use of multiple currency in Zimbabwe.
93. This Statutory Instrument, was then confirmed and made permanent by the amendment made in Section 11 of the Exchange Control Act [Chapter 22:05] through Section 34 of the Finance Act No.13 of 2023.
94. The legal position therefore in Zimbabwe is that the US dollar is legal tender in Zimbabwe.
95. To that extent it is not foreign currency.

96. To that extent, section 5 of the Exchange Control Act and section 4 of the Exchange Control Regulations does not apply to anyone who deals with the US dollars in this Country. The facts therefore do not disclose a cause of action and the Court therefore erred in placing the Accused on remand.
97. The Appellant further contends that any interpretation of the law in a narrower manner as to require exchange control authority to be required in trading in a currency that is legal tender in Zimbabwe would be arbitrary and invalid.
98. Such an interpretation would render section 4(1) (a) and Section 5 of the Exchange Control Regulations in so far as they may be read to imply proscription of transacting in US dollars to be clearly in breach of the Appellants right to equal protection and benefit of the law defined in section 56(1) of the Constitution of Zimbabwe.
99. Put simply it would be absurd and discriminatory to allow free transactions in a in a Zimbabwean currency ZiG or RTGS and then to restrict transactions in another legal currency of Zimbabwe namely the US dollar or the Rand.

B. The Court a quo grossly erred in ignoring that Bail is a Constitutional Right and that the Accused person ought to have been granted bail.

100. The Constitution is very clear. It protects individuals right to personal liberty.
101. The Constitution makes it clear that the liberty of a person shall not be deprived of their liberty arbitrarily or without just cause.
102. For the reasons mentioned above, the Appellant's liberty was taken away from him without just cause.
103. Further, the Constitution in Section 50(1) d makes it clear any person who is arrested must be released unconditionally or on

reasonable conditions pending charge or trial unless they are compelling reasons justifying their continued detention.

104. The Courts in this jurisdiction have embraced the new Constitution and have accepted the sacrosanctity of Section 50(1) (d) of the Constitution .See **State v Kachigamba & Anor HH358/15, Shoshera & Ors v The State HB103/22, Mary Mubaiwa v The State HH 15/20, Dumisani Moyo v The State HMA20/18, Phibion Nduke v The State HH357/23 and State v Sangu HH591/16.**

105. The Appellant contends that they weren't any compelling reasons to deny him his freedom.

106. It is common cause that the Appellant allegedly dealt with the sum of US\$ Ten (10) dollars.

107. There is no way in this world that Appellant will ever be subjected to a custodial sentence for illegally dealing with a US\$ Ten (10) dollars. It's not possible.

108. It would be a travesty of justice.

109. Furthermore, the fact that the Magistrate expressed a political opinion connected to the need to protect the new local currency known as ZiG, cannot be used to affect the Appellant's freedom.

110. As I demonstrate below, citizens should not be criminalised for merely trying to live and continuing with their own business. Moreso, when it is clear that innocent citizens are being criminalised as a result of the mismanagement and mishandling of the economy by the authorities.

111. In short, the ruling of the Court a quo infringes the Appellant's rights contained in section 50(1) d of the Constitution of Zimbabwe.

C. The Court a quo grossly erred in ignoring that it was in the interest of justice to release the Accused person

112. Even without the protection that the Appellant enjoys, the Court a quo erred in failing to recognize that it was in the interests of justice that the Accused person be released on bail.
113. There was no evidence that the Accused person is a Foreign currency dealer. He is fully and gainfully employed at the City of Harare.
114. The Accused earns his entire salary in RTGS dollars or ZiG yet his obligations are monetized in US dollars.
115. For instance he rents a house in Glenview 7 where he has to pay rent in the sum of US\$ 120.00 (hundred and thirty dollars)
116. The school fees of his child is required in US dollars.
117. He also supports his parents who live in a village called Buhera.
118. He does not own a car and riding an omnibus to and from home requires payment in US dollars in the sum of US\$ 3.00 per day.
119. He's other expenses include food and clothing which he has to purchase in US dollars.
120. The Accused therefore transacted to obtain US dollars for his survival.
121. The State and the country's laws are thus criminalising the innocent activities of the Accused and millions of other Zimbabweans who are in exactly his position.
122. These millions of Zimbabweans include Prosecutors, Policeman, Magistrates and Judges' who are made to earn in RTGS or ZiG yet the rest of their life is monetized in US dollars.

123. US dollars are required to pay for electricity, to pay for petrol, passport fees, vehicle license fees, groceries and rentals yet the Government is paying people in RTGS or ZiG dollars.
124. The State is thus the author of the chaos that innocent citizens such as the Appellant find themselves.
125. The State should not be allowed to harvest from its own policy misdirection's.
126. Moreover, the State has failed to ensure that US dollars are readily available in banks.
127. Foreign currency is not sold in banks and until recently, only a few privileged powerful people had the right to approach and purchase US dollars at the Dutch Auction system.
128. There was no provision for ordinary citizens such as the Appellant to purchase US dollars.
129. As recent as Sunday the 12th of May 2024, the Minister of Finance and Investment Promotion himself ,acknowledged that foreign currency was not available to ordinary citizens in banks .I attach here as **annexure B** an extract from the Sunday Mail on the same date which quotes extensively the Deputy Minister of Finance and Investment Promotion Honorable David Kudakwashe Mnangagwa, confessing to this anomaly.
130. The acknowledgement by the Minister is confirmation of the fact that Exchange Control Regulations ,and the unavailability of US dollars in a dollarised economy is making innocent persons such as the Appellant criminal.
131. They're not criminals.

132. It is thus ridiculous that the Government creates a situation where the economy is dollarised, businesses and the Government itself demands payment in US dollars yet citizens are paid in a local currency that Government itself and businesses refuse.

133. The Appellant is not a criminal and should therefore be released on bail.

D. The Court a quo grossly erred in ignoring that non of the factors justifying the refusal of bail which are listed in section 117(2) existed

134. In terms of Section 117 of the Criminal Procedure and Evidence Act [Chapter 9:07], an Accused person shall be entitled to be released on bail at any time.

135. The use of the imperator 'shall' denotes a command.

136. Section 117(2) of the CPEA makes it clear that bail may be denied in the interests of justice where there is a likelihood that the Accused if released will: *-i) endanger the safety of the public (ii) not stand his or her trial or appear to receive sentence; or (iii) attempt to influence or intimidate witnesses or to conceal or destroy evidence; or (iv) undermine or jeopardise the objectives or proper functioning of the criminal justice system, including the bail system;*

137. It is respectfully submitted that non of the above factors exist in the instant matter.

138. More disturbingly the Court a quo did not consider the above issues.

139. It is respectfully submitted that there were no compelling reasons to deny the Appellant bail and the Appellant should be released on bail.


f. The Court a quo misdirected itself in its findings

140. In dismissing the Accused person's application for bail the Court a quo held that the Accused person was facing a serious offense and that if sentenced he would be facing a lengthy custodial sentence. Further it held that the State had overwhelming evidence against the Accused and that he was likely to abscond if released on bail.
141. It is contended that the Court a quo misdirected itself on all those points and where there is a misdirection the Appeal Court must intervene. **See *Barros and Another v Chimponda* 1999 (1) ZLR 58(S), *RBZ v Granger & Anor* SC 34/01**
142. Firstly, the Accused person is not facing a serious offense. Dealing with foreign currency in the sum of Ten (10) US dollars does not warrant a custodial sentence.
143. Even if it was a serious offense, a point made but not conceded, the seriousness of the offense is no reason to deny bail. **See *State v Hussey* 1991(2) ZLR 187 (S), *State v Kanoda & Ors* HH200/90, *State v Makamba* 2004 (1) ZLR 367 (S) and *Phibion Nduke v The State* HH357/23.**
144. Furthermore, the Court misdirected itself in holding without any evidence that the Accused person was likely to abscond. It is a misdirection for any court to simply accept averments made from the form 242 provided as herein.
145. The case of ***Edmore Shoshera and Ors v The State* HB103/22** and many others make it clear that it is not sufficient for the State to make bold assertions that particular grounds for refusing bail exist. The assertions made by the State must be grounded on facts.
146. Clearly the Court a quo failed to properly apply its mind in this case correctly.
147. The Court a quo's ipse dixit to the effect that the Appellant and others like him were on a spree to undermine the newly introduced

ZiG, is a dangerous non-legal statement that cannot and should not have been a consideration by the Court.

148. That statement is clear evidence that extraneous political factors which are not legal factors were taken into account in the determination of the Appellant's case.
149. The fact of the matter is that court's cannot be used ,to prop up questionable monetary and fiscal policies.
150. The Court a quo's misdirection could never have been more glaring.
151. The Appellant therefore prays that free bail be granted in the instant matter.
152. In the circumstances we pray for an Order in terms of the draft.

DATED AT HARARE ON THIS 15th DAY OF MAY 2024.



**TENDAI BITI LAW
HMB CHAMBERS
28 Rowland Square
Milton Park
HARARE [TB/TC]**

AND TO: THE REGISTRAR
High Court of Zimbabwe
HARARE

AND TO: CLERK OF COURT
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AND

TO : NATIONAL PROSECUTING AUTHORITY

Respondent's Legal Practitioner's

101 Kwame Nkrumah Ave

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**IN THE HIGH COURT OF ZIMBABWE
HELD AT HARARE**

**CASE NO.HCH...../24
REF CRB NO.ACC 81/24
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ALBERT DZIKAMAYI CHEKURE

APPELLANT

**AND
THE STATE**

RESPONDENT

DRAFT ORDER

Before Honourable Justice.....

Mr Tendai Laxton Biti
Mr/Mrs

For the Applicant
For the Respondent

Whereupon after reading papers and documents filed of record:

IT IS ORDERED THAT:

1. The decision of the Magistrate Court handed down on the 6th of May 2024 in case number CRB No. ACC81/24 in the matter of State v Albert Dzikamayi Chekure in respect of which the Accused was denied bail be and is hereby set aside.
2. The Appellant Albert Dzikamayi Machekure be and is hereby admitted to free bail.
3. There be no order as to costs.

THE REGISTRAR

THE JUDGE

A

Z.R.P

FORM 242

REQUEST FOR REMAND

Station: CID COMMERCIAL CRIMES DIVISION [NR]	Prosecutor's Ref: 598/24
HCCR/04/24	
Section: COMMERCIAL CRIMES DIVISION [N. REGION]	C.R.B No: ACC 81/24
DR77/04/24 /04/24	
Investigating Officer: DSGT MUZONDO 0773908930	Prison No:

(Note: in the case of joint accused, all are to be included on same Request for Remand From)

Section A

Accused: Albert Dzikamayi Chekure, aged 31 years
 NR : 07-225733G07
 Res: 11062 Glenview 7, Harare.
 Bus: Not Employed
 Cell: 0783788515
 Email albertchekure@gmail.com

Arrested (date) 18/04/24 (time) 1230hrs

Section B

Offence(s)

Contravening section 5(1)(a)(ii) of the Exchange Control Act Chapter 22:05 ARW section 4(1)(a)(i) of the Exchange Control Regulations SI 109 of 1996

Allegations(s)- SEE ATTACHED ANNEXURE

(state facts linking accused to the commission of crime/offence, e.g. accused was found in possession of stolen radio, etc,)

1. Witness statements.
2. USD10 s/n PH315203340A used as trap money.
3. trap authority

Value of property stolen/

Value of property recovered...nil

Section C

Bail- **Opposed**

Reasons for opposing bail are:-

1. **Accused has a known record/previous conviction(state)**
...to be checked.....

2. **Accused has pending cases in court (quote Station, C.R/CRB)**
...to be checked.....

3 **Accused is likely to abscond (give reasons e.g. has no family, no house, etc.)** Offence is serious and likely to carry a custodial sentence and therefore accused is induced to abscond. There is a strong case against the accused and evidence in the form of trap authority, proof of transfer and witness testimony, Accused did not give a probable defence upon arrest and does not ties to the jurisdiction of the court that is has no formal basis.

4. **The accused is likely to interfere with evidence/witnesses (give reasons why you say so)**
N/A

5. **Accused is likely to commit other offences (give reasons)**
~~Accused is likely to commit similar offences as illegal foreign currency dealing is his way of raising funds to earn a living.~~

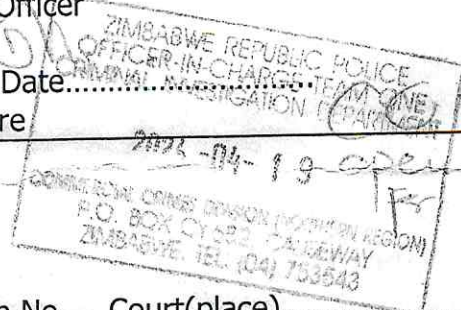
6. **Any other reasons.....**There is intelligence to the effect that the accused has been illwggally dealing in foreign currency and there are ecocash transfers in his mobile phone which indicates the transaction. Investigations are still being carried out with the assistance of Econet wireless as well as Cyber Laboratory.

Section D

Date investigations should be complete.....**19/06/24**.....possible number of witnesses....03

Date.....**19/4/24**.....(Signed).....**MUZONDO F.**(Rank)...D/SGT(No)...058416V
Investigating Officer

Checked: Officer/Member In Charge.....
Signature



Section E

Officer/Member In Charge,
Z.R.Police,.....

Case remanded to (date).....at(time).....in No.....Court(place).....

Docket to the public prosecutor by.....

Bail conditions.....

.....

Date Signature..... Name(print).....



Bail is opposed
.....
.....

ANNEXURE

Complainant in this case is State represented by Bianca Masvaure a detective Sergeant stationed at CID CCD Commercial crime Division Northern Region.

Accused in this case is Albert Dzikamai Chikure aged 31 years residing at house number 11 62 Glenview 7, Harare and is employed at City of Harare.

On the 18th day of April 2024 a team of Detectives were on surveillance and they spotted accused carrying transactions of illegal foreign currency dealing at corner Angwa street and Nelson Mandela.

The team approached the accused person and Bianca Masvaure requested accused to transfer buddie airtime for ZiG130,00 equivalent to USD10,00. She then gave the accused USD10 transaction money serial number **PH315203340A**

Accused person then transferred the airtime from his ecocash account number 0783788515 to Benjami Nyahema ecocash number 0774337649.

This resulted to the arrest of the accused person and subsequent recovery of A huawei cellphone embedded with a buddie simcard 0783788515 used by accused to transact.

Accused's act was unlawful.

B



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Individuals to get access to forex



Deputy Minister Mngangwa

Business Reporter

Individuals seeking smaller amounts of foreign currency will be able to access the funds in the next few weeks following revelations the Government, in collaboration with mobile phone companies, is finalising the modalities for the rollout, an official has said.



With 85 percent of domestic transactions now conducted in US dollars, concerns have been mounting about the limited access to foreign currency by the general public for essential goods like fuel.

While the Reserve Bank of Zimbabwe (RBZ) prioritises access to forex by importers with verifiable foreign invoices, as indicated in the 2024 Monetary Policy Statement, little consideration was given to individuals who require smaller amounts of forex for everyday purchases.

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Robert Kennedy Colle

Last week, Finance, Economic Development and Investment Promotion Deputy Minister David Mnangagwa informed Parliament that the Government was aware some economic agents were not yet accepting the new currency, Zimbabwe Gold (ZiG).

As such, it is critical to cater for the population segment served by these agents, he said.

Deputy Minister Mnangagwa said many Zimbabweans, especially those in rural areas, needed the foreign currency for small purchases, even if they were not involved in export business.

He acknowledged the gap, saying the Government was working with mobile network operators to find a solution. The idea was to create a system, like a mobile money exchange platform, that allows people to convert small amounts of ZiG to US dollars and vice versa, thus making the new currency more convenient for daily transactions.



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“These are youth, women, people in the rural areas who might not necessarily want to export, but need foreign currency for something,” said the deputy minister.

“There are some barbershops that are not accepting ZiG for now. Many service stations right now are not taking ZiG, henceforth there is a need for that day-to-day transacting.

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“Even as we go forward with some of the policies that we are introducing, you will find that the gap has been left behind. Where that gap is left behind is where we then involve the private sector. What the Government has been doing is that we have reached out to our mobile network operators,” Deputy Minister Mnangagwa added.

“We requested two things from them (Econet, Netone and Telecel) firstly, we have people who want to transact in small amounts. Sometimes you just want to see your US\$20 or US\$50 in your pocket, can we not have a Netcash platform, a bureau de change that can allow exchange from ZiG to US dollar and from US dollar to ZiG?

“That is currently under discussion and you should see that happening in the next few weeks.



“This is important because it will remove the need for those who want to use small amounts of USD for their day-to-day use.”

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He said agents of mobile money platforms such as Ecocash would be expanded, allowing people to withdraw or deposit physical ZiG and US dollars to foster financial inclusion.

People in rural areas will have access to convert or obtain ZiG and US dollars through convenient methods. While the specifics are still being finalised, the overall plan is set to ensure no one is left behind when it comes to foreign currency needs, he added.

The deputy minister said the plan was also meant to avoid people resorting to illegal money changers, who risk getting arrested by the police.

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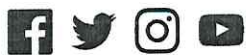
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