

**SHEPHERD MASIYE**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
CHEDA AJ  
BULAWAYO 2 FEBRUARY 2012

*K. Ngwenya* for applicant  
*Miss A. Munyeriwa* for respondent

Bail pending appeal

**CHEDA AJ:** This is an application for bail pending appeal. The applicant was charged with, contravening section 368(4) of the Mines and Minerals Act (Chapter 21:05) in that he was found prospecting for gold without a licence. He pleaded guilty to this charge and was sentenced to 2 years imprisonment with labour.

The Act provides, in section 368 (4)(b) for a mandatory sentence of not less than 2 years imprisonment with labour for prospecting without a licence unless there are special circumstances. In addition, the suspension of any part of a sentence is prohibited.

The applicant submitted that he has good prospects of success on appeal against the mandatory sentence because he is youthful, is an orphan, he is poor and he needed money after making a woman pregnant. I do not consider these grounds sufficient to persuade an appeal court to overrule or alter the mandatory sentence. The applicant says he is 20 years old. He is married. Clearly he has passed the youthful age that he is claiming. The fact that he made someone pregnant, if it is someone different from his wife, can only highlight his irresponsible conduct. If it is his wife, that still cannot be a special circumstance. The fact that he is poor does not assist him either. Poverty has never, to the best of my knowledge, become an excuse for breaking the law.

In all, I see nothing that can persuade an appeal court to interfere with the mandatory sentence imposed by the court *a quo*. There is not merit in the application and the appeal has no prospects of success.

The application is dismissed.

*Mabhikwa, Hikwa & Nyathi*, applicant's legal practitioners  
*Criminal Division, Attorney General's Office*, respondent's legal practitioners