REPORTABLE (52)

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(1) LOVEMORE ITAI MUKANDI (2) NELSON SILVERN YEUKAI MAWERE MUBVUMBI (3) DAVID NYABONDO (4) MOHAMED AHMED MEMAN
v
THE STATE

CONSTITUTIONAL COURT OF ZIMBABWE
MALABA DCJ, ZIYAMBI JA, GWAUNZA JA, GARWE JA, GOWORA JA, HLATSHWAYO JA, PATEL JA, GUVAVA JA & CHIWESHE AJA
HARARE, SEPTEMBER 18, 2013, & SEPTEMBER 25, 2014

J B Wood for the first, second and third applicants

T R Nyanyiwa for the fourth applicant

S Fero for the respondent

GOWORA JA: The applicants in this matter are seeking an order for the permanent stay of their prosecution on charges of fraud. They allege their constitutional right to a fair trial within a reasonable period, guaranteed under s 18(2) of the former Constitution, has been violated by reason of the inordinate delay by the State to bring them to trial.

THE BACKGROUND

The first applicant, Lovemore Itai Mukandi, ("Mukandi"), the second applicant, Nelson Silvern Yeukai Mawere-Mubvumbi ("Mubvumbi") and the applicant David Nyabondo ("Nyabondo") were formerly employed by the Central Intelligence Organisation. Mukandi was the Deputy Director of Administration, Mubvumbi was the Chief Transport

Officer and Nyabando the Chief Administration Officer. The fourth applicant Mohamed Ahmed Meman ("Meman") was a director and shareholder in African Timber and Builder Suppliers (Pvt) Ltd.

The applicants were arraigned before the Magistrates Court sitting at Harare on 15 March 1999 for allegedly contravening s 136 of the Criminal Law (Codification and Reform) Act [Chapter 9:23], fraud, alternatively, contravening s 3 (1)(f) of the Prevention of Corruption Act [Chapter 9:16]. The allegations against the applicants were the following. Mukandi was tasked with the responsibility to arrange for the construction of houses for the organisation. He co-opted Mubvumbi and Nyabando to assist him with the project. Meman was requested to submit a quotation for the construction of the houses without submitting to government tender procedures. African Timber and Builder Suppliers submitted a quotation for the sum of Z$16 106 559. Meman subcontracted the project to Direct Line Electrical Services and Sale (Pvt) Ltd, a company in which Mubvumbi was the beneficial shareholder. It was alleged that the four applicants misrepresented to the organisation that the costs of construction had escalated by the sum of Z$16 773 784.32 which the applicants are alleged to have shared.

At their initial appearance in court, the applicants were granted bail and remanded to June 1999. Thereafter they were remanded to September 1999 and 31 January 2000 at the request of the State. On 31 January 2000 the applicants were removed from remand after the State indicated that it required more time to prepare its case. The State was advised if need be to proceed by way of summons against the applicants.

No further action was taken by the State to bring the applicants to court and on 31 July 2001 the first applicant left the country for Canada. The other three (3) remained in the country. On 21 September 2011 the Canadian authorities deported the first applicant to Zimbabwe. Following his arrival, the State proceeded to serve summons on all the applicants, starting with the first applicant on 28 September 2011. The second and third applicants were served on 29 November 2011 with the fourth applicant being served last on 2 December 2011. In terms of the summons, the applicants were to be tried on 15 December 2011.

On the scheduled date the trial failed to take off yet again. The reason given by the State was that the docket and the record could not be located. The matter was further remanded to 9 January 2012. Again, for reasons not specified by any of the parties, the trial failed to start and the matter was remanded to 17 January 2012, on which occasion the applicants applied for referral of the matter to this Court.

WHETHER THE APPLICATION IS PROPERLY BEFORE THE COURT

It is conceded by the State that the application is properly before the Court. The matter was referred to this Court by the Regional Magistrate following an application by the applicants in terms of s 24 (2) of the former Constitution of Zimbabwe, which provides as follows:

> "24 ENFORCEMENT OF PROTECTIVE PROVISIONS
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> (1) ..n/a
>
> (2) If in any proceedings in the High Court or in any court subordinate to the High Court any question arises as to the contravention of the Declaration of Rights, the person presiding in that court may, and if so requested by any party to the proceedings shall, refer the question to the Supreme Court unless, in his opinion, the raising of the question is merely frivolous or vexatious."

In their application for referral before the Magistrates Court, the applicants alleged that their rights to a fair trial within a reasonable period as guaranteed under s 18 (2) of the former Constitution had been infringed. After a consideration of the authorities and mindful of the delay of thirteen (13) years that had elapsed from the time that the applicants were charged to the date of trial, the learned magistrate formed the view that the application was not frivolous or vexatious. He concluded that it was a proper case for consideration by the Supreme Court as to whether or not the right of the applicants to a fair trial within a reasonable period had been infringed. He then referred the matter to this court. He was correct.

The applicants did not file a draft order but all prayed for a permanent stay of the prosecution of charges that had been preferred against them.

Various decisions emanating from this Court have set out the factors to be taken into account in determining an application of this nature. In *S v Nhando & Others* 2001 (2) ZLR 84, CHIDYAUSIKU ACJ (as he then was) set out the relevant authorities wherein the factors were considered by this Court in determining an alleged violation under s 18 (2) of the Constitution. This is what he stated at p 84G-85B:

> "This court has had occasion to deal with similar applications on a number of occasions. The following are some of the cases: *In Re Mlambo* 1991 (2) ZLR 339 (S); *Hungwe & Ors v Attorney-General* S-50-94; *S v Mataruse* S-101-94; *S v Marisa* S-126-95; *S v Musvitis & Anor* S-229-93; *In Re Masendeke* 1992 (2) ZLR 5 (S); *Martin v Attorney-General & Anor* S-53-93. The above line of cases establishes that in determining such an application as this one the following factors are to be taken into account:
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> (a) the length of the delay;
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> (b) the reasons for the delay;
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> (c) the assertion by the accused of his or her right to a speedy trial;

(d) the prejudice to the accused caused by the delay."

I proceed to consider each of these factors in turn.

THE DELAY

Mukandi told the magistrate that following upon his arrest he got dismissed from employment in 1998 and at the time he was Deputy Director General. In 2000 he was advised that he had been pensioned off.

Regarding the criminal charges, his evidence was that he had been arrested on 15 March 1999 together with the other three applicants on allegations of fraud, or, in the alternative, contravening a section of the Prevention of Corruption Act. They were detained for three (3) days and, when taken to court for initial remand, were allowed bail. Thereafter they were remanded to court on a number of occasions up until 31 January 2000 when further remand was refused and the state was advised to proceed by way of summons.

Mukandi was in Zimbabwe for the rest of 2000 and in 2001 he decided to seek greener pastures as he was aware that his chances of obtaining employment within the country were slim. He then applied for and obtained a visa to study in Canada and on 31 July 2001 left the country for Canada. He told the court that since his last court appearance on 31 January 2000, there had been no contact from the police or the State in connection with the criminal charges.

After his studies he obtained employment from 2009 to September 2011 when he was deported to this country. He had not been made aware in any manner that the authorities wanted him back to face criminal charges. When he arrived at the Harare

International Airport on 22 September 2011 he was placed under arrest and detained. He was taken to court on the 27 September 2011 and was set free as there was no warrant for his arrest.

Thereafter he was served with summons for a court appearance on 15 December 2011. His co-accused were with him. The trial could not proceed because the police docket and the court record were missing. The matter was then postponed to 9 January 2012 but again for one reason or another it failed to take off. It was then postponed to 17 January 2012 when all the applicants applied for the matter to be referred to the Supreme Court.

The other three applicants gave a similar version in respect of their arrest, detention and numerous remands at the behest of the State culminating in the magistrate refusing to further remand all the applicants. They also confirmed that from January 2000 to September 2011 there was no effort on the part of the State to bring them to trial. They were all summonsed to court for the 15 December 2011 subsequent to the return of Mukandi to Zimbabwe.

Mawere-Mubvumbi said that he had remained in the country for the whole period except for a short sojourn to South Africa to buy groceries. He had been dismissed from employment but had been reinstated through an order of court. He had been served with summons about seven (7) days before the trial. He had learnt of the arrest of Mukandi in the newspapers.

Nyabondo had an almost identical story to tell. He confirmed that he remained within the country the entire period that the charges were pending. He had also been advised that the trial could not proceed in the absence of Mukandi although the reason for that decision had not been explained. He confirmed that when the magistrate removed him and his colleagues from remand, they were advised that if anything happened they would be called to court for trial.

In turn, Meman confirmed the several remands at the instance of the State and the fact that further remand was refused by the magistrate in January 2000. He confirmed that he had been made aware of summons in December 2011. He went to the Police Station and collected the summons but again the State was not ready for trial resulting in the applicants applying for the matter to be referred to the Supreme Court on the alleged violation of their constitutional right to a fair trial.

The application is opposed by the State. However, the State did not adduce evidence before the court *a quo* or before this Court. Mrs Fero, who appeared for the State, placed reliance on heads of argument filed in answer to those filed by the applicants. There was no contest by the State on the facts placed before the court *a quo* by the applicants.

The State accepts that the overall delay in having the applicants brought to trial was thirteen (13) years, and that the delay is presumptively prejudicial so as to trigger an enquiry by this Court into a possible contravention of s 18 (2) of the former Constitution of Zimbabwe.

REASONS FOR THE DELAY

Section 18 (2) of the Constitution reads;

> "If any person is charged with a criminal offence, then, unless the charge is withdrawn, he shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."

Under the section any person facing criminal charges is afforded the following;

(a) The right to a fair trial.

(b) The right to be tried within a reasonable time.

(c) The right to be tried by an independent and impartial court.

The applicants contend that the first two of these fundamental rights have been violated. The law is now settled that it is the applicants that bear the *onus* to establish that the delay was unreasonable. *In Re Mlambo* (*supra)* it was held:[1]

> "It is for the person charged to persuade the court that the delay complained of exceeds what is reasonable. See *Fikilini v Attorney-General* (*supra*) at 117D-E. The degree of persuasion required of him is to show that the delay is prima facie unreasonable, or in the words of POWELL J in *Barker v Wingo (supra)* at 530, "presumptively prejudicial". It is that which triggers the enquiry into the other factors that go into the balance. It is the threshold at which the court may look to the State for an explanation.
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> It is, of course, neither possible nor desirable to identify precisely the length of delay which will trigger an enquiry. Each case is to be viewed in the light of its own particular circumstances in order to determine whether the delay is *prima facie* unreasonable."

It is contended by the applicants that the length of the delay in this case is more than sufficient for this Court to find that the delay is *prima facie* unreasonable. The State is in agreement that the period is lengthy. It is, however, contended by the State that in the circumstances of the case the delay is not at all unreasonable.

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[1] At p 353A-C

Within this jurisdiction, lesser periods of delay have been held to be unreasonable. In *S v Nemutenzi* 1992(2) ZLR 233 (H), it was held that a delay of four years eleven months was inordinate, resulting in the court granting a permanent stay. *In Re Mlambo, (supra)* a delay of four years seven months wholly attributable to the State was held to have constituted a grievous infringement of the applicant's right to a fair trial justifying a permanent stay of prosecution. In *S v Musvitisi & Another* SC 229/93, the court considered that a delay of two years and five months might be presumptively prejudicial and an enquiry into other factors was conducted to determine whether or not the applicants' rights to a fair trial within a reasonable period had been infringed. Similarly, in *S v Watson* 2006 (1) ZLR 394, a delay of ten years in between the arrest of the applicant and bringing the applicant to trial was held to be inordinate and a violation of his fundamental right to a fair trial within a reasonable period. The prosecution was accordingly stayed.

The applicants contend that the State has not adduced any evidence to explain the initial delay as a result the magistrate refused to keep the applicants on remand. I agree. The State has the *onus* to give an explanation for the delay for which it has accepted responsibility.

Mrs *Fero,* on behalf of the State, accepted that prejudice can be presumed *in casu*. It is a real possibility that in a period of thirteen years the memories of witnesses and those of the applicants would have faded. Further, the witnesses and those sought to be tried will recall certain aspects of the case and forget others.

From submissions filed by Mrs *Fero* it seems that the applicants were arrested before investigations had been completed and that further investigations continued

subsequent to their arrest. Judging from the remands of the applicants, the State was not ready for trial from March 1999 until December 2002. It is safe to assume that the period in question relates to what is generally termed systemic delays. In *re Mlambo (supra)* GUBBAY CJ commented as follows:[2]

> "It is apparent that a reasonable time is necessary for the State to be in a position to get the case to trial. A varying extent of time will be needed to prepare the docket depending on the complexity or otherwise of the proposed charge or charges; to record the statements of witnesses; to arrange for their attendance. In addition, there are the usual systematic delays, such as a congested court calendar, the availability of court facilities, judicial officers and prosecutors and the considerate accommodation of witnesses. The system is not perfect and resources are limited, and one has to accept as normal and inevitable a period of delay in respect of these matters. But this is not to accept that the State can justify abnormal periods of systematic delays on such grounds."

Mrs *Fero* conceded that the delay to bring the applicants to trial between 15 March 1999 and 6 December 2002 can be visited on the State, as the record shows that it was not ready for trial during this period.

In my view, the period from March 1999 to December 2002 can by no means be described as abnormal as it is common cause that none of the applicants within that period sought to have their prosecution stayed. What they did was to request that the magistrate remove them from further remand. However, the charges against them had not been withdrawn. They did not, at that stage of the proceedings, consider the failure by the State to bring them to trial within that period to constitute a violation of their constitutional right to a fair trial within a reasonable period.

However, the State contends that it was not wholly to blame for the delay that occurred from December 2002 as the State was in a position to proceed but was unable to do

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[2] At 345H-346B

so primarily because Mukandi could not be located. The reason proffered by the State is that it was not prudent to try the other three applicants in the absence of Mukandi due to the nature of the evidence that it had to adduce. As a result, even though they were available for trial, the other three applicants were not summoned for trial until September 2011. Further, in view of the relationship between the government of Canada and the government of Zimbabwe efforts to have him repatriated to this country were largely unsuccessful leaving the trial in limbo.

There is no dispute Mukandi was at liberty to relocate following the court's refusal to keep the applicants on remand and that no restrictive conditions were placed either on him or the other applicants. Indeed he was then resident in Canada and the e-mails submitted by the applicants show that there was communication between the State and the Canadian authorities from December 2002 up until 2007, in which requests were made by the State for Mukandi to be extradited, but this was futile as there was little or no co-operation from the latter. Consequently, the decision was made not to proceed even against those applicants who were in the country. It is common cause that Mukandi was not extradited but was deported to this country in 2011 for reasons not related to the allegations that were pending against him and his co-accused.

Once the State was ready to proceed with the trial, attempts were made to have Mukandi extradited from Canada as is evident from the communication between Interpol Canada and Harare Interpol. Whilst the communication appears not to have had a sense of urgency, it can be accepted that the State exhibited the desire to have Mukandi brought to this jurisdiction for trial.

In my view, the events that intervened between the period when the applicants were first charged and the eventual setting down of the matter for trial would serve to afford an acceptable explanation for the inordinate delay. The question that is before this Court is whether the explanation can lead to the conclusion that such delay in the circumstances of the case cannot be regarded as unreasonable.

The test for determining whether there has been an unreasonable delay or not requires an objective analysis of all the factors surrounding the entire process, including any challenges and problems that the prosecuting authority might have been faced with during the relevant period. The attitude and actions of the accused persons are also a consideration in the assessment. In *Mlambo's* case *(supra)* GUBBAY CJ stated:

> "The distinction between what is a reasonable period and what is not cannot be drawn too sharply. Undoubtedly it will be difficult in some cases to decide whether the lapse of time in affording an accused a fair hearing of his case has passed the reasonable mark or not. It is a question of degree. All the circumstances have to be considered in making what is essentially a value judgment. However, I believe that the experience of judicial officers enables them to determine on which side of the line the position of a particular accused falls."

Remarks to the same effect were made by KRIEGLER J in *Sanderson v Attorney-General, Eastern Cape* 1998 (1) SACR 227 (CC) at 242a-c wherein he stated:

> "The test for reasonableness whether the time allowed to lapse was reasonable should not be unduly stratified or pre-ordained. In some jurisdictions, prejudice is presumed-sometimes irrebuttably-after the lapse of loosely specified time periods. I do not believe it would be helpful for our courts to impose semi-formal time constraints on the prosecuting authority. That would be a law making function which it would be inappropriate for the court to exercise. The courts will apply their experience of how the lapse of time generally affects the liberty, security and pre-trial interests that concern us. Of the three forms of prejudice, the pre-trial related variety is possibly the hardest to establish, here as in the case of other forms of prejudice, trial courts will have to draw sensible inferences from the evidence. By and large, it seems a fair although tentative generalisation that the lapse of time heightens the various kinds of prejudice that s25 (3((a) seeks to diminish."

Mukandi holds a Bachelor of Law (B.L.) degree as well as a Bachelor of Laws (LLB) degree. He was fully aware that he faced serious criminal charges. He stated that, even though he had been retired by his former employer, he could have practised law within the country. He however decided that he could further his studies elsewhere and by so doing he removed himself from the jurisdiction of the courts in this country. He obtained a police clearance for his visa application to Canada. Much was made of this process. He might have obtained police clearance for processing his visa application, but what he did not state was whether or not he advised the office of the Attorney-General of his intention to leave the country. This Court cannot reach the conclusion, which the applicants urge it to, that because the immigration authorities and a department within the police force were aware of Mukandi's departure from the country, then the prosecuting authority was aware of his departure and allowed him to leave. The suggestion that is implied is that the charges against him had been dropped. Clearly the charges had not been dropped and the particular authorities that had an interest in him would not have been happy at his departure from the jurisdiction before the conclusion of the criminal trial.

It is a moot issue whether or not the decision by the State not to proceed against the other three applicants in the absence of Mukandi was reasonable in the circumstances of this case. However, sight cannot be lost of the fact that by leaving as he did, Mukandi placed the ability of the State to prosecute its case in jeopardy. He did not clear himself with those particular officers who had arrested him and placed him on remand. As a trained legal mind, he would have been aware that unless charges had been withdrawn after a plea was tendered in court those charges remained pending. It cannot have escaped his mind that at some future time the police would conclude their investigations and he would be

required to attend court. He does not suggest anywhere in his evidence that he had left a forwarding address with the prosecution authorities.

In making its value judgment the Court must strike a balance between the interests of the accused person and those of society. In as much as an accused person has the right to assert that his constitutional rights should be given effect to, it is in the interest of a functioning society that suspected perpetrators of a crime be brought to trial.

WHETHER THE APPLICANTS ASSERTED THEIR RIGHT TO A FAIR TRIAL

Both parties are agreed that the applicants asserted their right to be tried within a reasonable time, which resulted in their removal from remand on 31 January 2000. When arraigned for trial after the deportation of Mukandi to this country, they all took the first opportunity they could to assert their right to a fair trial by applying to the magistrate for the referral of the matter to this Court.

WHETHER THE APPLICANTS HAVE SUFFERED PREJUDICE AS A RESULT OF THE DELAY

All the applicants have said that it would be difficult to recall events that took place more than thirteen (13) years ago, a position that seems to find resonance with the State. The delay in this case is considerable and in the history of this jurisdiction would seem to be the longest period on record before a person charged with an offence has been brought to trial. The applicants contend that they will be prejudiced in their defence because of the lengthy time the State has taken to eventually try them.

Whilst accepting that the applicants have spent a long period awaiting trial, the State contends that its witnesses are available and that it is ready for trial. It is further submitted that it was ready for trial on 17 January 2012 when the application was made referring this matter to this Court.

As regards the alleged violation of his Constitutional right to a fair trial within a reasonable period, Mukandi said that since his deportation he and his wife had separated. The family remained in Canada and they were finding it difficult to cope alone. He had not been given notice of his deportation and had to send his boss a letter of resignation via e-mail. He said that since his arrest he had developed health problems and mentioned diabetes, high blood pressure and cholesterol, which ailments he said he did not suffer from prior to the arrest.

He was concerned that his trial would not be fair due to the delays and conduct by the State in the whole matter. He said that the offence was alleged to have occurred between 1996 and 1998 and that, due to the passage of time, he could not recall the events surrounding the alleged offence and he was afraid that he would not get a fair trial. He also could not recall whether or not he had any documents which could assist in the conduct of his defence at his trial.

Mukandi stated that he would have wanted to call a Dr Mashingaidze, who was his immediate boss during the period when the offence with which he is charged is alleged to have occurred. He stated that Mashingaidze is now blind. He did not place evidence before the magistrate to show that Mashingaidze was unable to testify as a result of the alleged blindness. The court is invited to infer that by virtue of the alleged blindness the witness cannot give evidence.

This is an assumption that the court cannot make. In my view there is nothing that militates against a blind person being a credible witness and it has not been established that the State cannot be asked to afford facilities to assist the witness in giving evidence.

Apart from the long delay, Mawere-Mubvumbi did not state how his defence would be compromised if he went to trial now. He had since developed illnesses and was on treatment for stress, diabetes, hypertension and arthritis. Although Mukandi had received some payment the employer had received no such payments.

He also stated that he did not believe that he would receive a fair trial. He said he had learnt that the State did not want him and the other two tried in the absence of Mukandi. He was asked if he had any witnesses to call if the matter went to trial and his response was "I do not want to think of any, we would go down to a book of Guinness". He should have shown exactly how being tried now would prejudice him in his defence. This was not an answer to the question. In my view he has not shown any prejudice to his defence.

These remarks apply with equal force to Nyabondo. It appears to have escaped the legal practitioner who was representing the applicants when the application for referral was made that each of the applicants individually had to show prejudice.

When the Meman was asked if he had any witnesses who could testify on his behalf, he stated that he could not recall any. He told the magistrate that he had since developed health problems related to trauma, stress and all the things that go with it. His evidence was to the effect that the stress extended to his family members as people would phone asking what was going on.

There exists in society, between the State administration and the general populace, a collective interest that those who commit crimes be tried quickly, fairly and justly. Trials that are held quickly and expeditiously achieve these noble principles. A lengthy period whilst awaiting trial has an effect of eroding an accused person's integrity. Socially, an unresolved criminal charge against an accused would cause him embarrassment and might result in ostracism from friends and relatives. It is only fair therefore that an accused person be tried provided such trial does not undermine the rights that such accused has to be tried fairly and within a reasonable period of charges being preferred against him.

The yardstick for ordering a permanent stay of prosecution is not simply a question or issue of fairness to the particular accused, although it is an important consideration in the factors to be weighed. The court has to consider whether there is an abuse of the court processes by the prosecuting authority for some ulterior motive. It is also of importance to consider whether the continuation of the prosecution is inconsistent with the recognized processes of the administration of criminal justice and so constitutes an abuse of court process.

Thus, it is incumbent upon the court, when considering whether a delay is alleged to have prejudiced an accused's right to a fair trial, to have regard to the interest that society has in the resolution of the culpability of an accused person, especially when a permanent stay of prosecution is sought. I would respectfully associate myself with the views of KRIEGLER J in *Sanderson v Attorney-General* (supra)[3] to the following effect:

> "Although this case is concerned with the rights of the accused under s 25(3)(a) of the interim Constitution, the point should not be overlooked that it is by no means only the accused person who has a legitimate interest in a criminal trial starting expeditiously. Since time immemorial it has been an established principle that the

[3] At 244g-

public interest is served by bringing litigation to finality. And, of course, quite apart from the general public there are individuals with a very special interest in seeing the end of a criminal case. Conscientious judicial officers, prosecutors and investigating officers are therefore always mindful of the interests of witnesses, especially complainants, in bringing a case to finality. Ordinarily the interests of all concerned are best served by getting on and getting done with the case as quickly as reasonably possible, but it may happen that the interests of the accused conflict with those of others. Though the interests of others should not be ignored in deciding what is reasonable, the demands of s 25(3)(a) require the accused's right to a fair trial to be given precedence."

The applicants had the *onus* of placing before the court factors that would show that a trial after such a lengthy period would prejudice them in their defence. They have not done so. The charges they face are very serious. The amount involved is considerable, notwithstanding that the offences are alleged to have been committed during the era of the Zimbabwe dollar. The allegations relate to fraud involving government funds and taxpayers would have an interest in the outcome of criminal charges concerning fraud allegedly committed in respect of state funds. When weighed against the prejudice that the applicants allege they will suffer from a delayed prosecution, it my considered view that society would be justified in expecting that the criminal trial be brought to its logical conclusion.

It is in the interests of justice that they be put on trial for the allegations they face. In the circumstances of this case none of them has been able to point to any prejudice that would ensue, with the exception of the delay which has been accepted to be presumptively prejudicial.

In concluding it is my view that the applicants have failed to make out a case for a permanent stay of prosecution. The application is accordingly dismissed.

MALABA DCJ: I agree

ZIYAMBI JA: I agree

GWAUNZA JA: I agree

GARWE JA: I agree

HLATSHWAYO JA: I agree

PATEL JA: I agree

GUVAVA JA: I agree

CHIWESHE AJA: I agree

Advocate J.B. Wood, first – third applicant's legal practitioners.

Messrs Manase & Manase, fourth applicant's legal practitioners.

The Attorney-General's Office, respondent's legal practitioners