

LEPANI VARANI v STATE (HAA014 of 2007)

HIGH COURT — APPELLATE JURISDICTION

5 SHAMEEM J

30 March 2007

10 **Criminal law — bail — breach of bail conditions — failure to show reasonable cause for failure to appear — evidence from record showed Appellant was told to appear on certain date but had forgotten the date — Appellant was apologetic and asked for a fine — no tariff for offence but maximum sentence of 12 months’ imprisonment and \$2000 fine — first conviction under s 26 of Bail Act — explanation given by Appellant did not qualify as “reasonable cause” to be considered as mitigating — Appellant was entitled to greater latitude in sentencing — Appellant was sentenced to 9 months’ imprisonment — Bail Act s 26.**

15 The Appellant was released on bail with conditions. Among those conditions was to be present in court on 22 November 2006. The Appellant failed to appear and did not show any reasonable cause. The Appellant was charged with one count of being in breach of bail conditions. The Appellant claimed that such appearance was not part of the conditions for his bail. The Appellant additionally stated that the facts were fabricated against him. The Appellant later apologised and was sentenced to 9 months’ imprisonment.

20 On appeal, it was established that the Appellant had been told to appear but had forgotten the date. The Appellant also stated that he had multiple court files, intermittent periods in prison and has regular employment as a grass cutter.

25 **Held** — The Appellant gave a full explanation for his breach of bail and the court did not consider that the Appellant was prejudiced by the failure to read him his options. The Appellant failed to show reasonable cause and was rightly convicted. Although the reasons provided by the Appellant were not reasonable causes, the excuses given amounted to mitigation of the sentence imposed. The Appellant was entitled to greater latitude in sentencing under the circumstances. The sentence was reduced to 6 months’ imprisonment.

30 Appeal allowed in part.
No cases referred to.

Appellant in person

35 *S. Hamza* for the State

Shameem J. The Appellant was charged with one count of being in breach of bail conditions. It was alleged that on 14 September 2006 he was released on bail in the Nasinu Magistrates’ Court to appear in court on 22 November 2006. On that date he did not appear. He failed to show reasonable cause for his failure to appear and was convicted. He was sentenced to 9 months’ imprisonment.

40 He appeals against conviction on the ground that the prosecution had not proven its case beyond reasonable doubt because it had not been a condition of his bail that he had to appear in court on the 22nd of November 2006. He submitted that the facts against him were fabricated.

45 The charge was laid on 29 November 2006. He pleaded not guilty on the same day and said “not present on 22/11/06 as I was not aware. On 14 November 2006 I was still in prison. Released on 20/10/06 on bail”.

50 The prosecution said from the bar table that when the case was called on 14 September 2006 both Accused were present. This was confirmed by the court record. The Accused then said that he had too many cases and had forgotten the court dates. The court said:

Under section 26 (2) of the Bail Act the burden is on the defendant to prove that he or she had reasonable cause for failing to surrender. I now give you the opportunity to show the court that you had reasonable cause.

5 The Appellant said he could not remember the court dates, that the prisons and police should have reminded him of the dates, that he was working at Vuci South cutting grass, and that he had too many cases to remember the dates.

The court then convicted him. In mitigation the Appellant apologised and asked for a fine. He was remanded for 2 weeks and then sentenced to 9 months' imprisonment. There is no tariff for the offence, but the maximum sentence is 10 12 months' imprisonment and \$2000 fine. Although this was his first conviction under s 26 of the Bail Act, he had 43 previous convictions.

The submission that the Appellant had been a serving prisoner in November 2006 was raised for the first time on appeal. Nevertheless I asked the State to give me evidence of the time he had been in prison, and gave State counsel leave to 15 adduce further evidence.

The affidavit of Joe Kulinidilo, prison officer states that the Appellant was remanded on 22 September 2006, and released on bail with conditions on 20 October 2006. One of the conditions was that he appeared in court on the 22 November. He did not appear until 29 November 2006, on bench warrant. He 20 was then remanded until the 12 December 2006, when he was sentenced to 9 months' imprisonment.

I accept the contents of this affidavit and accept that the Appellant was on bail to appear in court on 22 November. Although he claims that no conditions attached to bail, it is evidence from the record that he had been told to appear on 25 22 November, but had forgotten the date.

The procedure for the trial of an offence under s 26 of the Bail Act is not set out by the Act itself. However, it is usually clear from the court record itself that the Accused is on bail, and that he is apparently in breach of it, so the calling of prosecution evidence would be an unnecessary exercise unless the presiding 30 magistrate did not have access to the court file. Further, the burden of proof rests on the Accused to prove that he had good cause for the breach. What is necessary, when the court file itself is the "evidence: is the 'show cause' procedure". It would have been preferable to give the Appellant the opportunity to give sworn or unsworn evidence. However in this case the Appellant gave a full explanation 35 for his breach of bail and I do not consider that he was prejudiced by the failure to read him his options. On the facts of the case, he failed to show reasonable cause, and he was rightly convicted.

I am not however persuaded that a sentence of 9 months' imprisonment was justified. Despite his many previous convictions, he was never convicted 40 previously for breach of s 26(2) of the Bail Act. The explanation he gave while not qualifying as "reasonable cause" did amount to mitigation. Certainly if he forgot his court dates, and he had multiple court files, intermittent periods in prison and regular employment as a grass cutter, he was entitled to greater latitude in sentencing.

45 In these circumstances I consider that his sentence should be reduced to 6 months' imprisonment.

This appeal is allowed to that extent.

Appeal allowed in part.