

TAURAI MATARIRANO
And
ISAAC KAWUNDURA
And
MOSES KARUMBIDZA
And
TADY MAGAMA
And
LEARNMORE MAKORE
And
WELLINGTON MOYO
And
HARDLIFE MAZHEKE

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 10 & 17 JANUARY 2019

Bail pending trial

L. Mudisi for the applicants
K. Jaravaza for the state

MAKONESE J: The applicants are facing charges of armed robbery as defined in section 126 of the Criminal Law Codification and Reform Act (Chapter 9:23). The state alleges that on 11 December 2018 the applicants acting in connivance with eight other persons who are still at large acquired two vehicles which included a Toyota Hilux truck and a Toyota Fan Cargo, registration number ADL 1349 which was being driven by the 5th applicant. The applicants armed themselves with 3 rifles and pistols. The applicants proceeded to Mimosa turn off, along the Zvishavane – Bulawayo highway. The applicants arrived at Camlark Investments where they pretended to be police officers who intended to search the premises for firearms. The applicants then took possession of three cellphones and six cellphones from customers who were at the mine milling their gold ore after firing one shot in the air and ordering everyone else to lie down.

The state further alleges that one of the applicants remained guarding all other persons who were lying down and the other seven accused persons force - marched two security guards to the residence of Chinese personnel operating the mine and forcibly opened the gate using a bolt cutter. The applicants then shot and killed a dog which was at the premises. The applicants then man handled Zhang Ren Ion and held hostage other Chinese nationals and locked them up in one room. The applicants took a small bag and collected cash amounting to US\$8 820, \$6 800 (bond) and 2 155 Chinese Yen. Applicants took off with the loot in an Isuzu King Cab vehicle stolen during the robbery. The motor vehicle was later recovered through indications made by the applicants. The police also recovered cellphones stolen during the robbery.

The law regarding bail is fairly clear. Section 50 (1) (d) of the Constitution of Zimbabwe (Amended) No. 20, 2013 guarantees the right to bail unless there are compelling reasons for the continued detention of an arrested person.

The applicants contend that they are suitable candidates for bail. They argue that their arrest was a result of confessions extracted through torture from one of the accomplices, Thulani Isheunesu Nkala. The applicants contend that they have been wrongly implicated in this offence and that the state case against them is very weak.

In opposing bail, the Investigating Officer sets out the reasons for opposing bail and how the applicants are linked to the offence. In arguing for the release of his clients on bail pending trial *Mr Mudisi* appearing for the applicants took a very casual approach to the involvement of the applicants. His approach was simply that the arrests were a result of forced confessions which would be inadmissible at trial. In his view, the applicants would have no case to answer as there was no causal link between the offence and the applicants. *Mr Jaravaza*, appearing for the state submitted that he stood by is written submissions in his opposition to bail pending trial. What seems to have escaped the attention of both state and defence counsel in this matter are the contents of the Request For Remand, Form 242, which sets out the reasons why the granting of

bail was being opposed. There are four crucial grounds for opposing bail which have been raised by the Investigating officer. I shall deal with each one of them in turn.

1. **Applicants made voluntary indications at the scene of the crime which were confirmed by the witnesses.**
2. **Three of the stolen cellphones were recovered through accused persons' indications.**
3. **The recovered property was positively identified by the complainants.**
An Isuzu King Cab, stolen during the robbery was also recovered from one of the applicants.
4. **The applicants are facing serious charges and if convicted are likely to be sentenced to long custodial sentences.**
5. **Some of the complaints are linked to robbery of smelted gold and are wanted by CID Lupane. Some applicants are connected to a robbery which occurred at Inyathi. The police are still investigating robberies allegedly committed by one or more of the applicants at Mashava and Shurugwi.**

This court is aware that the seriousness of the offence on its own is not a ground for denying a suspect bail pending trial. In *S v Biti* 2002 (1) ZLR (H) the court noted that:

“The primary question for consideration is whether the applicant will stand trial or abscond but more equally important is whether the applicant will influence the fairness of the trial by intimidating witnesses or interfering with evidence. The court should always grant bail where possible and should lean in favour of the applicant provided the interests of justice will not be prejudiced.”

In this matter, whilst the applicants contend that they were merely implicated by the torture of one of the co-accused persons, no details have been furnished regarding the alleged torture. The applicants have said nothing about the recovery of the stolen cellphones. The applicants have sought to distance themselves from the commission of the offence and yet nothing is said about the indications that they made at the scene of the crime and the recovery of the Isuzu truck recovered during the robbery. The applicants have remained silent about the fact that they are linked to previous cases of robbery. Where an applicant for bail pending trial has

pending cases of a similar nature the likelihood of abscondment is an important consideration. I must point out that in an application for bail pending trial, the state is not required to prove its case against the applicants. The state is required to establish a causal link between the applicant and the offence. Once a link is established, the applicant is expected to set out the basis of his defence to the allegations. Where the court is satisfied that the interests of justice would be jeopardized by the granting of bail, the court in its discretion will refuse to grant an application for bail.

In the circumstances, I am not satisfied that it is in the interests of justice to grant the application at this stage. I would accordingly dismiss the application for bail pending trial.

Mutendi, Mudisi & Shumba Legal Practitioners, applicants' legal practitioners
National Prosecuting Authority, state's legal practitioners