THE ATTORNEY GENERAL

versus

MARK TENDAI MUNYAWARARA

HIGH COURT OF ZIMBABWE

ZHOU J

HARARE, 17 and 21 August 2012

ZHOU J: This is an appeal by the Attorney General against the judgment of the Magistrates’ Court granting bail to the respondent.

This court will interfere with the decision of a Magistrates’ court to grant or refuse bail only if the Magistrate committed an irregularity or misdirection or exercised his discretion so unreasonably or improperly as to vitiate his decision. *S v Malunjwa HB 34-03; S v Ruturi* HH 23-03; *S v Makamba* SC 30-04.

The first ground relied upon by the appellant is that the respondent has the propensity or is likely to commit other offences if he is released on bail. In this respect the appellant cites the fact that the respondent was arrested whilst on an outstanding warrant of arrest for not restituting and that he has a pending case at Mbare Magistrates, Court. The Learned Magistrate considered both issues and found in favour of the respondent. I find no misdirection in the approach of the Magistrate. The prospensity to commit offenses while on bail is not established on the papers filed by the appellant. It has not been shown as to what offences were committed by the respondent while he was on bail.

The appellant also contends that the respondent “ is facing serious allegations”. The Learned Magistrate was alive to the seriousness of the allegations against the respondent when he granted bail. The position of the law is that the seriousness of an offence is not a reason for denying an accused person bail. See *S v Hussey 1991* (2) ZLR 187 (S). The appellant has not established misdirection on the part of the Magistrate in granting bail in accordance with that established principle of law.

In the absence of any facts which the Learned Magistrate did not consider which show a risk of abscondment on the part of the respondent, I find that the Learned Magistrate committed no misdirection.

Accordingly, the appeal is dismissed.

*Gunje & Chasakara* , Respondent’s Legal Practitioners