DICKSON MOROSI
and
KUNDAI MAKWARIMBA
and
FORTUNE SIBANDA
versus
THE STATE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 14 & 16 September 2016

Bail application

T. Takaendesa for the applicant
T. Kasema for the respondent

ZHOU J: The three applicants are officers of the Zimbabwe Republic Police. They were arrested on allegations of contravening s 113 of the Criminal Law (Codification and Reform) Act (*Chapter 9:23*). It is being alleged that on 26 July 2016 at about 1430 hours the applicants and seven of their accomplices who are still at large came up with a plan to steal from the complainant. They had inside information that the complainant was carrying large sums of cash from his business premises to his residence in Belvedere, Harare. The applicants and their accomplices, acting in common purpose, drove in two motor vehicles without registration numbers plates. They were in police uniforms. They mounted a fake police roadblock. When the complainant arrived where they were they confronted him about the large amount of cash which he had. The applicants then took the money and drove away in their getaway car, a Toyota Spacio which had no registration numbers. The applicants were subsequently arrested and are presently in remand prison, hence the instant application for bail pending trial.

The application was initially opposed by the respondent in terms of a response which was filed on 30 August 2016. On 5 September 2016 the respondent filed a supplementary response

in which its counsel advised that the application for admission to bail was not being contested because of a new fact which had emerged. The new fact is that when the complainant made his report to the police on 26 July 2016 he stated that the amount which he had lost to the applicants was in the sum of US$3 555.00. However, after the applicants had been arrested he changed the amount to US$56 000.00. In his affidavit statement deposed to on 8 September 2016 the complainant explained that he gave the amount stolen as US$3 555.00 because the applicants had told him that it was a criminal offence for him to carry large sums of money such as that which he had. The two figures given by the complainant are a relevant but not decisive factor in determining the strength of the case against the applicants.

The right of detained persons who have not yet been convicted to be admitted to bail is enshrined in s 50 (1) (d) of the Constitution which provides as follows:

> "(1) Every person who is arrested –
>
> (a) . . .
> (b) . . .
> (c) . . .
> (d) Must be released unconditionally or on reasonable conditions, pending a charge or trial, unless there are compelling reasons justifying their continued detention."

See also 117(1) of the Criminal Procedure and Evidence Act (*Chapter 9:07*).

The factors which the court will take into account in determining whether there are compelling reasons to warrant the continued detention of the applicants include those which are set out in s 117 (2) of the Criminal Procedure and Evidence Act. These are:

> "(a) Where there is a likelihood that the accused, if he is released on bail will-
>
> (i) Endanger the safety of the public or any particular person or will commit an offence referred to in the first schedule; or
> (ii) Not stand his or her trial or appear to receive sentence; or
> (iii) Attempt to influence or intimidate witnesses or to conceal or destroy evidence; or
> (iv) Undermine or jeopardize the objective or proper functioning of the criminal justice system."

The attitude of the prosecution to the applicant's application, though not necessarily decisive, is a factor which the court takes into account together with all the other relevant factors. See *Mahata* v *Chigumira NO & Anor* 2004 (1) ZLR 88 (H) at 92D-E. The offence which the

applicants are alleged to have committed is a very serious one, particularly as it involved mounting a fake roadblock in the name of the Zimbabwe Republic Police. If the applicants are convicted they are likely to face a long period of imprisonment given the fact that they are police officers who would have abused their authority and uniforms to commit the offence. While the seriousness of the offence is not always a bar to the admission of an accused person to bail, the facts in the present case point to a well-planned and executed scheme to commit an offence. The Form 242 reveals that the three applicants led the officers investigating the matter to the recovery of some money and motor vehicles purchased from the proceeds of the offence. The applicants have distanced themselves from the motor vehicles but fail to convincingly explain how and why they led the police to the recovery of those motor vehicles. All the three motor vehicles recovered were purchased a day after the offence was committed. The third applicant deposed to an affidavit in which he seeks to explain how he acquired the money used to purchase a Mercedes Benz motor vehicle but attaches no evidence to support the statements in that affidavit. The first and second applicants refer to the motor vehicles recovered during the investigations as belonging to their brothers. No effort has been made to provide evidence of the sources of the funds used to acquire those motor vehicles. In view of the facts alleged against the applicants they needed to provide convincing explanations to challenge the allegations that they are the ones who led the police to the recovery of those motor vehicles otherwise the proverbial story of the hyena that vomited grey hair a few hours after an old woman went missing applies to them. Put in other words, there is very strong and convincing evidence linking the applicants to the offences. The inducement to abscond is therefore very real.

Further, the risk of interference with the witnesses and evidence is clearly there. The applicants now know the name of the complainant. They are police officers. The offence involved the use of intimidation. Those who have claimed ownership of the motor vehicles which are alleged to have been purchased using the proceeds of the offence can easily collude with the applicants to frustrate the investigations once the applicants have been released. Finally, the applicants' alleged accomplices are still at large. The opportunity for them to team up with the applicants in order to interfere with investigations and temper with evidence would be provided by the release of the applicants at this stage.

In all the circumstances, this is a matter in which, notwithstanding the concession by the prosecution, there are compelling reasons to deny the applicants liberty. The administration of justice would be undermined by their admission to bail.

In the circumstances, the application for bail is dismissed.

Mugiya & Macharaga Law Chambers, applicants' legal practitioners
National Prosecuting Authority, respondent's legal practitioners