

SANGULANI CHIKUMBUTSO
versus
THE STATE

HIGH COURT OF ZIMBABWE
FOROMA J
HARARE, 8 November 2018 & 6 December 2018

Reasons For Bail Ruling

B. Mahuni, for the applicant
A. Masamha, for the respondent

FOROMA J: The applicant was arrested together with 5 co-accused with whom he is jointly charged of 6 counts of armed robbery. He has applied for bail pending trial

In his application for bail the applicant argued that he has no previous convictions and has a permanent place of residence and has no propensity to commit crime. He also denies vehemently that he was involved in any of the offences that the State alleges he committed with his co-accused. He further argued that he is operating a successful company pioneering new technology and inventions and is famous for the good work he is involved in and that he has substantial assets in Zimbabwe including immovable properties yet not a single deed of transfer was produced or referred to as proof. The applicant considers that the charges against him though very serious offences are not supported by any strong evidence. It is the applicant's position that he is not a flight risk.

The applicant's application was opposed by the respondent which argued that the applicant is jointly charged with 5 of his co-accused of armed robbery. The respondent also argued that the case against the applicant is very strong because amongst the fire arms recovered by the police was one the applicant claims to be his. The said firearm is unlicensed and was found in the vehicle of a co-accused (accused 2) who had given him a lift and he allegedly forgot it in the said vehicle.

The applicant has claimed that the said firearm was lawfully acquired as he had purchased it even though it was not yet licenced in his name. He claims that the said firearm is lawfully or properly licenced but the licenced holder of the firearm is not indicated or

disclosed neither did the applicant produce a copy of the firearm licence in respect of the said firearm.

The court was not satisfied that the possession of the firearm whether by the applicant or his co-accused is altogether innocent considering it was found in the vehicle of his co-accused who is also jointly charged with him for 6 counts of armed robbery. The court does not accept that if the firearm was not licenced in his applicant's name the applicant would innocently move about with it as its possession in those circumstances would not only constitute a criminal offence but would likely disqualify him on conviction from acquiring a licence by reason of the applicant having a relevant previous conviction apart from the firearm being forfeited.

The court found the applicant to be a flight risk. The Investigating Officer in his opposition to bail alleged that the applicant and his co-accused were of no fixed abode. Despite this allegation by police who additionally alleged that sometimes applicant and his co-accused lived in neighbouring countries like South Africa the applicant did not challenge/dispute this. The applicant could have easily produced his passport to refute this allegation as the passport would have either proved that he had never travelled beyond the borders or that if ever he had been out of the country he had done so lawfully and not through the porous borders. The above reasons for the State opposing bail coupled with the claim that the applicant might interfere with witness fortified the court in its view that the applicant was not a proper candidate for bail. While it is accepted that every accused person is presumed innocent until proven guilty this presumption cannot outweigh the risk that the applicant may not stand trial where the evidence against him seems strong and suggesting that in the event of a conviction would result in a lengthy custodial sentence. No doubt the risk of a lengthy custodial sentence would be an incentive for the applicant to abscond.

It was for these compelling reasons that the court dismissed applicant's application for bail.