

STATE  
versus  
THULANI MUNETSI

HIGH COURT OF ZIMBABWE  
**MUREMBA J**  
HARARE; 18; 20; 26 FEBRUARY, 13, 17 & 18 MARCH 2025

***Bail application***

Applicant in person  
*D H Chesa* for the State

MUREMBA J: The issue of granting bail to persons accused of robbery, particularly in cases of robbery involving the use of firearms, is a contentious and polarizing matter in this country. Robbery, committed in aggravating circumstances, is a heinous and violent crime. A significant increase in such robberies has, unfortunately been reported across the country. It is a crime that poses a grave threat to societal safety, fuelling widespread public calls for tougher measures, such as harsher penalties and denial of bail for those accused of it. Many people express outrage and frustration when bail is granted to accused suspects arrested on allegations of robbery. The public fears that such persons may not only abscond but are likely to reoffend. This concern is heightened by high-profile instances where accused persons released on bail have gone on to commit further crimes, amplifying the demand for a more stringent and cautious approach to handling such offences.

1. Needless to state, robbery by its nature involves threats of violence and or actual violence. It can manifest in various aggravated forms and more often than not is accompanied by the commission of other serious offences such as assault, murder, rape, kidnapping, and carjacking. During robberies, perpetrators may seriously harm or even kill their victims. They often use weapons to intimidate, or take their victims hostage to ensure compliance. The effects on the victims are profound and multifaceted. Many are intensely traumatised, they suffer long term anxiety, and may experience post-traumatic stress disorders (PTSD), with their sense of safety and trust in their environment irreparably shattered. Physical injuries from violent encounters can range from minor bruises to life-threatening wounds. Beyond the immediate loss of property, victims often face financial strain from medical expenses or replacing stolen items.

The psychological toll can lead to heightened vigilance, avoidance behaviours, and altered daily routines as victims struggle to regain a sense of normalcy and security. Given these deep and lasting scars, victims of robberies (who include the community which is vicariously affected) frequently oppose the granting of bail to accused persons. The prospect of accused persons reoffending or posing a continued threat fuels this resistance, as victims, understandably so, prioritise justice and safety after the nasty experiences.

2. But viewed from another perspective, there is a constitutional recognition that the presumption of innocence<sup>1</sup> and the right to bail<sup>2</sup> are fundamental principles of justice that must be upheld, even for serious offences. The balance between ensuring justice for victims and protecting the rights of the accused is a delicate one. The present case typifies that dilemma. The applicant, a forty- five-year-old man has for two years, endured the monotonous routine of appearing at Harare Magistrates Court every two weeks for remand, all the while remaining in custody without trial. Remarkably, this application marks his first-ever bail attempt to be admitted to bail. When I enquired from him the reason why he had not sought admission to bail previously he explained that he had been advised, soon after his first appearance in court, that his trial would commence in no time. As such, he waited for his day in court. He however, did not disclose who in the administration of justice chain had given him the advice. Days turned into months, and the months have now turned into two years of waiting for that trial. Skeptical, of his narration of events, I further questioned him if he was being truthful that this was his first bail application since his arrest. He stood firm in his explanation. When I asked State counsel, Mr. *Chesa*, whether the claim by the applicant was true, he had no rebuttal. I could not imagine how it was possible for the applicant to languish in custody for two years without trial and without ever attempting to secure his release on bail. That an accused person can spend two years in custody without trial betrays gaps in our criminal justice system which need to be bridged without delay.
3. The applicant who is identified in the State papers as the second accused faces charges for four counts of robbery as defined in section 126 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] allegedly committed in Msasa Park; Adelaide Park; Epworth and Marlborough in Harare in the company of Jealous Mafuwa (accused 1); Tendayi N Munengwa (accused 3), Blessing T Dandadzi (accused 4), Courage T Dumba (accused 5) and Robson Mhandu (accused 6). Tichaona Kariwo who would have been the seventh accused is now

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<sup>1</sup> S 70 (1) (a) of the Constitution of Zimbabwe, 2013.

<sup>2</sup> S 50 (1) (d) of the Constitution of Zimbabwe, 2013.

deceased. He was shot by the police when he jumped out of a police vehicle and attempted to flee at the time the applicant and Robson Mhandu were being arrested on the 4<sup>th</sup> of January 2023 at OK Marimba, Harare.

4. The brief allegations in the first count which the applicant and his accomplices stand accused of are as follows. On October 6, 2022, at around 6:45 PM, the accused persons entered a hardware store in Harare, where the complainant and two workers were preparing to close shop for the day. One of the accused persons was brandishing a pistol, forcing the shopkeepers to lie on the floor. The accused persons tied up the complainant and her workers before stealing \$1,300 in cash from the shop, along with the keys to the complainant's car. They searched the car and took an additional \$400, a cell phone, and various groceries, including rice, sugar, cooking oil, and sausages. The accused persons also stole items from the shop, including another cell phone, a cargo belt, and nylon rope, before fleeing in their getaway vehicle. The total value of the stolen goods was \$2,593, and none of it was recovered.
5. In the second and third counts it is alleged that on October 6, 2022, at around 7:30 PM, the accused persons intercepted a vehicle in Zimre Park, Ruwa, after its driver, a lady who owns a shop in Zimre Park, was driving her employees to their individual homes. When she stopped to drop off one employee, one of the accused persons entered the vehicle under the pretence of being a passenger, produced a pistol, and ordered the occupants to comply with his demands. Two more armed accomplices joined in, taking control of the vehicle and driving it towards Harare CBD while their getaway car followed. The accused persons searched two of the employees, stealing from one of them \$40 in cash and a Samsung M12 cell phone, which they smashed and left behind. The total value stolen from this complainant was \$40, and nothing was recovered. After robbing the first complainant, the accused persons searched the second complainant stealing \$170 in cash and his Huawei cell phone, which they smashed and left behind. The total value of stolen items from this complainant is \$170, and nothing was recovered. The accused persons then assaulted the driver, demanding cash, but found none. They took her phone and attempted to lure her husband, who refused to be lured after being warned of the robbery by the employee who had disembarked from the vehicle at the time the accused persons intercepted the vehicle. The accused persons eventually abandoned the vehicle at Maruta shops and fled in their getaway car.
6. In the fourth count it is alleged that on November 16, 2022, at approximately 7:10 PM, the complainant, a tailor from Marlborough, Harare, was ambushed by the accused persons who were driving two vehicles, a silver Mercedes Benz and an unidentified car. The accused persons

blocked her motor vehicle, forcing her to stop. Two armed men confronted her, pointed a pistol at her neck, and stole her Samsung cell phone, \$2,870 in cash, and her national identity card. They fled the scene in their vehicles.

7. The State outline, gives an account of how each accused person was arrested. On **November 30, 2022**, detectives received information implicating the accused persons. Specifically, it was reported that **Accused 3, Tendayi Munengwa**, and **Accused 4, Blessing Dandadzi**, were located at Whitehouse Shopping Centre in Kuwadzana, Harare. Acting swiftly, detectives followed up on this lead, which resulted in the arrest of both accused. They interrogated them, leading the two to revealing their involvement in the crimes. They implicated their accomplices. On **December 2, 2022**, further intelligence led detectives to a hideout in Eastlea, Harare, where **Accused 1, Jelous Mafuwa**, was believed to be hiding. Detectives pursued Mafuwa in a high-speed chase from Eastlea to Westgate, during which he abandoned his vehicle, a Toyota Mark X with registration number AFZ 9145. He was eventually apprehended and subsequently confessed, also implicating his co-accused. On **January 4, 2023**, new information revealed that **Accused 5, Courage Dumba**, and **Tichaona Kariwo** (now deceased) were hiding in Melfort, Goromonzi. Detectives conducted a follow-up operation at the location, during which a gunfire exchange ensued. Despite the confrontation, both accused were arrested. Upon questioning, they confessed and further implicated their co-accused in the criminal activities. While transporting the two accused persons to the police station, detectives intercepted a phone call made by the applicant (**Accused 2, Thulani Munetsi**), and **Accused 6, Robson Mhandu** to Accused 5. They invited him to meet at OK Supermarket in Marimba to discuss plans for their next robbery. Detectives quickly acted on this lead and proceeded to OK Marimba Supermarket. Upon realizing that police were about to arrest them, the applicant and Mhandu attempted to flee on foot. However, detectives gave chase and successfully apprehended them. During their interrogation, the applicant and Robson Mhandu admitted their involvement in the robberies and also implicated the other accused persons.
8. On **December 3, 2022**, one of the complainants saw photographs of the accused persons, arrested by CID Homicide detectives, circulating on social media. She identified one of the arrested accused persons as a suspect in her robbery case. This complainant furnished the investigating officer with the photograph, which was subsequently printed and attached to the docket. It is alleged that the photograph will be presented in court as evidence. Unfortunately, it is not specified which complainant made the identification or which accused person was

identified in that instance. Additionally, the allegations across all four counts do not clarify the specific roles played by each accused.

9. In his written application for bail, the applicant asserted that he was not involved in the four robberies with which he is charged. He argued that no evidence links him to any of the offences. The applicant also highlighted that three of his co-accused, namely Jealous Mafuwa (Accused 1), Tendayi N. Munengwa (Accused 3), and Blessing T. Dandadzi (Accused 4) have since been granted bail. He contended that he deserves similar treatment and emphasized his patience in waiting for the completion of investigations and the commencement of his trial, which has now been delayed for two years. The applicant argued that, if the State indeed had evidence against him, his trial would have long been concluded. He maintained that the absence of progress indicates the State's lack of evidence.
10. In opposing the application, State counsel Mr. *Chesa*, supported by the investigating officer's affidavit, argued that the applicant went into hiding after learning that his co-accused had been arrested. He allegedly relocated to a hideout in Melfort, Goromonzi, and was only apprehended after a shoot-out with the police. This, according to Mr. *Chesa*, demonstrates that the applicant is a flight risk and would likely evade trial if granted bail. However, I noted that the averment by the investigating officer that the applicant was arrested in Melfort after a shootout with the police was not consistent with the averment in the State outline that says the applicant was arrested at OK Marimba in Belvedere. The investigating officer also stated that the applicant has a record of other pending cases: CID Homicide DRs 56/02/22, 66/02/22, and 69/06/22, as well as Budiro CR 322/06/22, Marlborough CR 224/02/22, and Ruwa CR 245/02/22. Mr. *Chesa* argued that the applicant's history of absconding and resisting arrest differentiates him from his co-accused, who were granted bail. Furthermore, he highlighted that the applicant's numerous pending cases create a genuine concern that he may reoffend, making him a danger to society. The prosecution also emphasized that the applicant faces serious charges that naturally attract severe sentences upon conviction. Investigations, Mr. *Chesa* asserted, have been completed, and the finalization of the case is imminent. He prayed that the bail application be dismissed, citing the applicant's alleged flight risk, potential for reoffending, and the seriousness of the charges.
11. During the hearing on the 18<sup>th</sup> of February 2025, the applicant disputed the circumstances of his arrest as presented by the State. He explained that he was arrested following a phone call to Tichaona Kariwo regarding a business transaction involving second-hand clothes. According to the applicant, he was in the business of selling second-hand clothes, and Tichaona Kariwo

owed him money and this is what his phone call to him was all about. He denied the claims that he had been in hiding in Melfort or that he was involved in a shoot-out with the police. Instead, he insisted that he was arrested in Belvedere near Long Chen Shopping Mall after being lured to the location by Tichaona Kariwo, who unbeknown to him, was under police arrest at the time.

12. The applicant's submissions highlighted the contrast between his assertion of innocence on one hand and the State's allegations that he was a flight risk and had pending cases on the other. It presented a challenging scenario in the determination of the truth. In response, Mr. *Chesa* sought a postponement of the matter to the 20<sup>th</sup> of February to enable him to summon the investigating officer to testify about the applicant's arrest.
13. On the 20th, the investigating officer, Jethro Tapererwa, appeared in court and gave *viva voce* evidence. He reiterated the contents of his affidavit, asserting that the applicant was apprehended at a hideout in Melfort, Goromonzi, during a shoot-out with police detectives. He stated that three or four accused persons were arrested at that location and emphasized that there was strong evidence against the applicant. According to him, following their arrest, the applicant and his co-accused led the police to the recovery of firearms used in the commission of the offences—a revolver recovered at the Melfort hideout and a rifle unearthed from a bush in Melfort. The investigating officer clarified that, apart from the six robbery charges faced by the applicant in the current matter, there were no other pending cases against him. He did not explain why he said the applicant is facing six counts when the present counts are four. He admitted to an error in his affidavit, where case numbers CID Homicide DRs 56/02/22, 66/02/22, and 69/06/22, as well as Budiro CR 322/06/22, Marlborough CR 224/02/22, and Ruwa CR 245/02/22, were mistakenly cited as the applicant's additional pending matters. He said in fact, these reference numbers pertained to the present charges. He also did not dispute that this was the applicant's first bail application since his arrest and admitted that three of the applicant's co-accused had already been granted bail by this court. However, he opposed the granting of bail to the applicant for reasons highlighted by Mr. *Chesa*. He further pointed out that accused 1, Jelous Mafuwa who was granted bail had long breached his bail conditions and was now subject of a warrant of arrest. After his release, Jelous Mafuwa also allegedly committed numerous offences across the country and is currently considered the most wanted suspect in the police database. He remains at large and untraceable.
14. Further, the investigating officer said that he had completed investigations as far back as 2023 and had referred the docket to the National Prosecuting Authority (NPA) at Harare Magistrates

Court on June 24, 2023. Since then, he has been awaiting instructions to subpoena witnesses but has not received any communication. It also emerged during the hearing, that the investigating officer had not been part of the team that arrested the applicant. He had only been assigned to the case for investigative purposes after the arrests were made. The applicant vehemently denied being arrested in Melfort or being involved in any shoot-out with the police. He insisted that he was arrested in Belvedere, near Long Chen Shopping Mall, by Detective Chikerema. In the interests of justice, the matter was postponed once again to the 26<sup>th</sup> of February to allow Mr. *Chesa* to summon the detectives who were directly involved in the applicant's arrest, as clarity on this issue remained essential.

15. On February 26<sup>th</sup>, Detective Sergeant Artwell Chidziva, stationed at CID Homicide Harare and was directly involved in the applicant's arrest, testified and confirmed the applicant's claim that he was arrested in Belvedere on January 4, 2023, along a road between Long Chen Shopping Mall and O.K. Marimba. Detective Chidziva explained that prior to the applicant's arrest, Courage Dumba and Tichaona Kariwo were arrested in Melfort, Goromonzi following a shootout, and these two led to the recovery of firearms allegedly used in the commission of the offences. The firearms, a revolver and a rifle were retrieved in Melfort before the applicant was arrested in Belvedere. Detective Chidziva stated that the applicant was arrested following a phone call he made to Tichaona Kariwo, who was already in police custody. The applicant, in the company of Accused 6, Robson Mhandu, called Tichaona Kariwo as detectives were transporting Kariwo and Dumba to the station after their arrest in Melfort. Upon receiving the call, detectives instructed Kariwo to put his phone on loudspeaker. According to Detective Chidziva, the conversation suggested that the applicant and Kariwo were planning another armed robbery that same day, although the detectives could not determine the intended location. During the conversation, the applicant allegedly inquired if Kariwo was armed. Acting on this information, the detectives directed Kariwo to lure the applicant and Mhandu to O.K. Marimba in Belvedere, where both men were subsequently arrested.
16. When I enquired the reason for the applicant's arrest at Marimba, Detective Chidziva clarified that it was for conspiring to commit a robbery with Kariwo. Crucially, he stated that, at the time of the arrest, no one had implicated the applicant in the four robberies for which Kariwo and Dumba had been arrested in Melfort. Detective Chidziva stated that the applicant's alleged involvement in those four counts of robbery only emerged after he was taken to the police station. It was during interviews at the station, that Courage Dumba implicated the applicant and Robson Mhandu. The detective confirmed that, prior to the applicant's arrest, no evidence

linked him to the four robberies. The applicant was ultimately charged with the robberies, but the initial charge of conspiring to commit a robbery, the very basis for his arrest was never pursued. Detective Chidziva said that, not being the investigating officer, he could not explain why the conspiracy charge was dropped. He further testified that at the time of his arrest, the applicant did not attempt to flee and was cooperative once the detectives introduced themselves. Robson Mhandu, however, attempted to escape but was pursued and swiftly apprehended. This is contrary to the averments in the State outline which say that both the applicant and Robson Mhandu attempted to flee and that the detectives gave chase and successfully apprehended them. Detective Chidziva went on to say Tichaona Kariwo, who was in the police vehicle unrestrained by handcuffs or leg irons, also attempted to flee. Taking advantage of the distraction caused by the arrests of the applicant and Mhandu, Kariwo jumped out of the vehicle and ran. He was shot by a detective during the pursuit and was later pronounced dead upon arrival at the hospital.

17. Even in the face of his many concessions, Detective Chidziva still opposed the admission of the applicant to bail, citing concerns that the applicant might team up with his co-accused, Jelous Mafuwa, who was granted bail in 2024 but has since violated his bail conditions. Mafuwa, now on the police's most-wanted list, has allegedly committed a spate of robberies across the country and remains at large. The detective expressed fears that the applicant, if released, could join that fugitive and continue their criminal activities. He also stated that the applicant was implicated in six robbery cases after his arrest—four in Harare, which form the basis of the current charges, and two additional offences allegedly committed in Odzi and Glendale (outside Harare). He explained that forensic analysis linked firearms recovered in Melfort to the scenes of the robberies in Odzi and Glendale. However, the detective admitted that the applicant has not yet been formally charged with the Odzi and Glendale cases, speculating that police in those areas might be waiting for the Harare cases to be finalized. That situation once again raises serious concerns about delays in the justice process. With no progress on the Harare cases over the past two years, the question is for how much longer is the applicant going to remain in custody, waiting for his outside Harare cases to move forward?
18. As I write this judgment, critical questions weigh heavily on my mind. The ones that however stick out are whether or not it can ever be justifiable to detain an accused person for two years without trial solely on the premise that armed robbery is a heinous offence and that accused persons charged with such crimes are deemed an inherent danger to society. Doesn't such an approach negate the accused person's right to the presumption of innocence, the right to be

tried within a reasonable time and the right to be admitted to bail? Is it fair that, after such an extended period of incarceration without trial, when an accused finally applies for bail out of frustration at the lack of progress, the State vehemently opposes the application? What would happen where such a person who has been in prison for so long is finally tried and is found not guilty?

19. The above considerations are compounded by glaring inefficiencies: the prosecutor who is opposing the applicant's admission to bail has no clue where the docket relating to the applicant's cases is yet the investigating officer insists that it was submitted to the National Prosecuting Authority a long time ago. More than 1 ½ years ago to be precise. What is clear is that neither the police nor the National Prosecuting Authority, seems to have a definitive answer regarding the docket's location. Even during the bail hearing, a couple of postponements occurred, yet no meaningful steps were taken by Mr *Chesa* to locate the docket or set the case for trial. He was just opposing bail without the knowledge of the position of the docket, betraying the fact that he was doing so blindly and for the sake of being seen to have opposed it. In my view, such an approach does little, if anything, to serve the interests of justice. The accused's rights do not find any space in this troubling scenario. The above revelations demand deep reflection, because they strike at the very essence of justice, fairness, and the integrity and efficiency of the criminal justice system. Admittedly, and as already demonstrated above, robbery is a heinous offence and the courts ordinarily loathe randomly releasing such offenders on bail because of the danger they pose to society. However, keeping a person charged with whatever offence (robbery included) in custody for two years without trial undermines the principles of justice and the rights of the accused.

20. S 69 (1) of the Constitution of Zimbabwe guarantees the right to a timely trial. It reads:

“Every person accused of an offence has the right to a fair and public trial within a reasonable time before an independent and impartial court.” (my underlining)

By providing for a trial within a reasonable time, the constitutional provision is aimed at ensuring that accused persons are not subjected to indefinite pretrial detention. Prolonged detention without trial violates that right and erodes public confidence in the justice system. Zimbabwe has ratified several international and regional human rights instruments that emphasize the right to a fair trial within a reasonable time. At international level, Article 14(3)(c) of the International Covenant on Civil and Political Rights (ICCPR) which Zimbabwe ratified on 13 May 1991 states that everyone charged with a criminal offence has the right “to

*be tried without undue delay.*” That provision ensures that justice is not delayed, protecting accused persons from prolonged uncertainty and potential abuse of pretrial detention.

21. While the Universal Declaration of Human Rights (UDHR) is not a treaty, Zimbabwe, as a member of the United Nations, is bound to uphold the principles of the UDHR since its independence in 1980. Its Article 10 guarantees the right to a fair and public hearing by an independent and impartial tribunal. This Article underscores the universal right to fairness and impartiality in judicial proceedings. While the UDHR does not explicitly state that matters should be tried without undue delay, the principle of fairness implicitly includes timeliness. A fair hearing must also be a timely hearing, as justice delayed can often amount to justice denied. Timely judicial processes align with a fair hearing.
22. At regional level, Article 7(1)(d) of the African Charter on Human and Peoples’ Rights (ACHPR) also known as the Banjul Charter, 1981, which Zimbabwe ratified on 30 May 1986 guarantees the right to be tried within a reasonable time by an impartial court or tribunal. This article ensures that justice is administered efficiently and fairly, preventing prolonged pretrial detention.
23. Zimbabwe’s ratification of international and regional human rights instruments, underscores its commitment to ensuring timely trials to uphold justice and prevent undue hardship for accused persons. These instruments reinforce the constitutional guarantee under Section 69(1) of the Constitution of Zimbabwe, which enshrines the right to a fair trial within a reasonable time. Section 2(2) of the Constitution further emphasizes that this obligation is binding on all State institutions and agencies, including the National Prosecuting Authority (NPA), the police, and the courts, requiring them to actively prevent violations of that right. The police are responsible for conducting timely and efficient investigations to avoid unnecessary delays, while the NPA must expedite prosecutions by ensuring that cases are prepared promptly and brought to trial without undue delay. The courts, in turn, have a duty to monitor and address delays in the justice system, ensuring cases are managed efficiently and accused persons are not subjected to prolonged pretrial detention. Judicial officers must uphold fairness and justice by intervening in instances of inordinate delay, including ordering the release of individuals detained for unreasonably long periods without trial. Prolonged detention undermines the principles of fairness, erodes public confidence in the justice system, and violates the Constitution’s binding protections of liberty and the right to a fair trial. Upholding these obligations is critical to maintaining the rule of law, safeguarding the integrity of State

institutions, and meeting Zimbabwe's commitments under international and regional human rights frameworks.

24. As stated earlier above, every person is presumed innocent until proven guilty. That right is violated by prolonged detention because there is no difference between a person who is incarcerated pending his trial and one who is serving a term of imprisonment after conviction. Imprisonment is imprisonment. In terms of s 70 (1) (a) of the Constitution of Zimbabwe, every accused person is presumed innocent until proven guilty. The provision reads:

“Any person accused of an offence has the following rights—  
(a) to be presumed innocent until proved guilty.”

Pretrial detention amounts to unjust punishment before conviction. Prolonged detention essentially imposes punishment without a verdict, treating the accused as though they are guilty and contradicting the principle that guilt must be established beyond a reasonable doubt through a fair trial. Such detention also violates the accused's right to liberty and freedom of movement, depriving them of these rights without due process and undermining their dignity and humanity. Furthermore, prolonged custody often leads to public assumptions of guilt, eroding the presumption of innocence. The stigma and reputational harm caused are frequently irreversible, even if the accused is later acquitted. The right to be presumed innocent inherently includes the guarantee of a fair trial within a reasonable time.

25. In this case, the State's failure to bring the matter to trial for two years highlights systemic inefficiencies. While robbery is undoubtedly a serious offence warranting strict measures, the principles of justice, fairness, and the rule of law must remain paramount. The applicant has endured prolonged detention without trial, yet the State's case against him appears weak. The applicant's arrest was based on his conversation with Tichaona Kariwo, who was already in police custody. At the time of the arrest, there was no direct evidence linking the applicant to the four counts of robbery. The applicant was only implicated in these offences by a co-accused, Courage Dumba after being taken to the police station, raising significant concerns about the reliability and admissibility of that evidence.
26. Section 259 of the Criminal Procedure & Evidence Act [*Chapter 9:23*] states that, “*no confession made by any person shall be admissible as evidence against any other person.*” This provision ensures that a confession by one accused cannot be used to incriminate or establish the guilt of another. The underlying rationale is to uphold fairness in criminal trials, recognizing that confessions may be unreliable due to potential coercion, misunderstanding, or other

factors. This principle is directly applicable here, as the applicant was implicated solely by a confession made by Courage Dumba. Under section 259, this confession alone constitutes a weak basis for the State's case. Furthermore, the charge of conspiring to commit an offence with Tichaona Kariwo, which formed the basis of the applicant's arrest, was not pursued. That omission further diminishes the strength of the State's case.

27. In light of the prolonged detention of the applicant without trial and without a strong evidentiary foundation, the question is why should the applicant be denied bail? Moreover, at the time of his arrest, the applicant made no attempt to flee and was not involved in a shoot-out with the police, contrary to what the investigating officer would have the court believe. While concerns exist that the applicant might join his co-accused, Jelous Mafuwa, in engaging in further criminal activities, that alone does not suffice as a justification to deny him bail. If the State intended to keep the applicant in custody, and perceived him as a danger to society, it must have ensured that his trial commenced long back. The prolonged delay in trying him raises the possibility that the State recognizes a lack of evidence against him. Denying bail under the circumstances of the present case is neither in the interest of justice nor consistent with safeguarding the applicant's rights.
28. Detaining accused persons in custody for extended periods such as two years without trial does little to truly protect society from robbers or dangerous criminals. While pretrial detention might appear to be a safeguard, it undermines the principle of justice and creates more problems than solutions. A robust criminal justice system aims to balance public safety with the rights of the accused, ensuring that justice is served fairly and efficiently. When accused persons are held for years without trial, it suggests systemic inefficiencies that do not contribute to society's safety. Instead, such delays often harm both the accused and society at large. If accused individuals are detained for prolonged periods without trial, it raises concerns about the adequacy of evidence against them. The justice system should prioritize the swift collection of credible evidence to ensure that only those individuals who pose real threats to society are convicted. Without sufficient evidence, the prolonged detention of potentially innocent people undermines the very purpose of justice. Holding individuals in custody for years without trial drains valuable resources such as time, money, and manpower that could be better utilised to conduct thorough investigations and prosecute cases effectively.
29. Society's protection from dangerous criminals is best achieved through fair trials that lead to convictions based on solid evidence. Once convicted, these individuals can be subjected to stiffer penalties, ensuring they remain in custody for a long time to come, serving their

sentences. Pretrial detention, on the other hand, is a temporary measure that does not guarantee justice. It is a short-sighted approach that fails to protect society in a meaningful way. Prolonged pretrial detention can have devastating consequences for the accused, even if they are later acquitted. It disrupts their lives, damages their reputation, and hinders their reintegration into society.

30. To protect the rights of accused persons, particularly the constitutional right to a fair trial within a reasonable time, courts must actively monitor and address delays in the justice system. Judicial officers should ensure cases are managed efficiently, preventing prolonged pretrial detention. When the State requests further remand, especially after investigations are complete, courts must demand valid explanations for postponements. If the State fails to show progress within a reasonable period, the accused should be granted bail to uphold justice and fairness.
31. Judicial reviews of cases involving detained persons can ensure accountability. Magistrates who man remand courts should investigate delays and compel the prosecution to provide updates on case statuses rather than continuously approving remands. Effective case management, particularly in Magistrates Courts handling serious offences like robbery, is essential to uphold justice. While serious crimes require strict measures, the rights of the accused must not be disregarded. The presumption of innocence must be maintained, and pretrial detention should not become punitive or a substitute for punishment. I say it again that prolonged detention without trial undermines justice, erodes the rule of law, and compromises public confidence in the legal system. Courts must balance the need to protect society with the obligation to respect the constitutional rights of accused persons. Where delays cannot be justified and investigations show no substantial progress, bail must be granted to prevent pretrial detention from becoming *de facto* punishment. A firm stance against unwarranted delays will reinforce the principles of justice and the presumption of innocence.
32. In terms of Section 50(1)(d) of the Constitution of Zimbabwe, bail is a constitutional right unless compelling reasons justify its denial. In this case, as demonstrated by the foregoing discussion, I did not find such compelling reasons to exist. While robbery involving the use of a firearm is an offence listed under the Third Schedule of the Criminal Procedure and Evidence Act thereby placing a reverse onus on the applicant to prove that their release on bail is in the interests of justice, I was satisfied that the applicant had successfully discharged this burden. It appeared that granting bail pending trial, under the circumstances of this case, would align with the interests of justice.

33. However, after preparing this judgment in favour of the applicant and while setting the conditions for granting him bail, I noted that the address he provided in his application—13134 Unit N, Seke, Chitungwiza had not been verified by the police during investigations. In fact, the State outline indicates that the applicant's address in Unit N, Seke, Chitungwiza is unknown. This discrepancy raised concerns. Upon further examination of the application, I observed that the section intended for the applicant to list individuals who could stand as sureties was left blank. This omission stood out as a red flag. Granting bail to an accused person facing multiple counts of robbery under these circumstances poses significant risks. Without a fixed address or reliable sureties, the likelihood of evading justice increases. Rented accommodation can complicate tracking the accused's whereabouts, especially if they choose to relocate. The gravity of facing multiple counts of robbery, potentially leading to a lengthy prison sentence, further heightens the risk of absconding.
34. Considering these concerns, instead of granting bail to the applicant on 13 March, I deemed it necessary to verify his address. I requested that the applicant confirm the address provided in his application, which he did, stating he had resided there since 2021. When asked for the name of the landlord, he initially claimed he did not know it but subsequently identified the landlord as a retired former ZESA employee named Mr. Matokodza. I also requested the names of his wife and children, which he provided, along with his wife's phone number. I tasked Mr. *Chesa* with instructing the investigating officer to verify the address and all other relevant information. The matter was postponed to 17 March to allow for verification and for the investigating officer to testify.
35. On 17 March, the investigating officer gave *viva voce* evidence in court. It emerged that the applicant had lied about residing at the provided address. He was unknown at that location, and the property owner, a widowed elderly woman disclaimed any knowledge of the applicant, his family, or a Mr. Matokodza. Furthermore, there was no cottage on the property, contrary to the applicant's assertion that he lived in a cottage while the owner occupied the main house. The property owner even consulted neighbours in the investigating officer's presence, but none of them recognized the applicant. The investigating officer also called the phone number provided by the applicant as belonging to his wife, but the person who answered claimed to be the applicant's wife's sister and stated that the applicant's wife was in the rural areas. The applicant was unable to meaningfully challenge the investigating officer's testimony. It became evident that the address furnished by the applicant is not his.

36. Mr. *Chesa* informed the court that a relative of the applicant was in attendance, sent by the family to provide evidence. The relative identified himself as Gardener Mumvuma. Upon examination, it became clear that he is not related to the applicant. He explained that he shares a totem with the applicant's mother and thus regards her as a sister. In addition, the two of them hail from the same rural area of Ngundu in Masvingo. He stated that the applicant, who hails from Shurugwi, was not of fixed abode due to his work as an artisanal miner. He said the applicant constantly moved between mining areas such as Mashava, Masvingo, Zvishavane, and Shurugwi before his arrest. He confirmed the applicant has a wife and three children but was unaware of their current residence. Regarding the address in Unit N, Seke, he said he had no knowledge of it, though he had heard that the applicant was staying in Chitungwiza at times and in Mabvuku at other times. The applicant did not challenge the entire testimony of this witness. He said he had no questions for the witness.
37. The above shows that the applicant lacks a fixed abode and that he fabricated his address. Investigations revealed that the address supplied in the bail application was false, and the applicant is unknown at the claimed location. A person without a fixed abode poses a significant risk of absconding, as there is no reliable way to locate them. This severely undermines the court's ability to ensure the applicant's appearance at future proceedings.
38. The applicant demonstrated a pattern of dishonesty by furnishing false information regarding his residence and landlord. Additionally, the names of potential sureties and other key details were omitted in the application. Such conduct undermines the applicant's credibility and suggests a deliberate attempt to mislead the court. A person who lies under oath cannot be trusted to adhere to bail conditions.
39. The applicant is an artisanal miner with no permanent residence, moving frequently between various locations. This nomadic lifestyle further compounds the risk of flight. Moreover, facing four counts of robbery, which carry the potential for significant prison sentences if convicted, creates a strong incentive for the applicant to evade trial.
40. Robbery is a violent and serious crime. The applicant's release on bail could pose a danger to public safety in the absence of reliable sureties or stable accommodation if he decides to engage in criminal activities of this nature. The court has a duty to prioritise the protection of the society from potential harm.
41. While the applicant has spent two years in custody and the State's case may appear weak, the applicant's actions of providing false information and lacking a fixed address threaten the orderly administration of justice. The court cannot ignore the risk of further delays or

disruptions which may be caused by the applicant's potential non-compliance with its set bail conditions.

42. Granting bail in the face of such blatant dishonesty could set a dangerous precedent, undermining public confidence in the justice system. It is imperative to demonstrate that accused persons must act in good faith when applying for bail.
43. In balancing the applicant's constitutional right to bail against the compelling reasons for its denial, the court concludes that the risks posed far outweigh any potential prejudice arising from prolonged detention. The applicant's conduct demonstrates a lack of reliability, leaving no confidence in his commitment to appear for trial. An accused person who lacks a fixed abode and provides false information about their residence cannot be deemed a trustworthy candidate for bail, as such behaviour undermines the court's trust in their assurances and significantly increases the likelihood of absconding.
44. Accordingly, the application for bail pending trial is dismissed.

**MUREMBA J:** .....

*National Prosecuting Authority, the State's legal practitioners*