

CHARLES CHEKENYERE

And

MARSHAL MUTEKWA

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 26 JANUARY AND 3 FEBRUARY 2022

Bail application

B. Mhandire, for the applicant
T. M. Nyathi, for the respondent

MAKONESE J: The applicants are facing eleven counts of robbery as defined in section 126 (1) (a) of the Criminal Law Codification and Reform Act (Chapter 9:23), one count of money laundering in violation of section 8 (1) (a) (b) of the Money Laundering and Proceeds Crime Act (Chapter 9:24) and one count of contravening section 4 of the Firearms Act (Chapter 10:09). Applicants deny any involvement in the commission of the offences. They claim that they have been wrongly implicated in these charges.

Factual Background

Between July 2021 and November 2021 there was a spate of armed robbery cases in the town of Beitbridge. The applicants are alleged to have organized themselves into a well coordinated armed gang. The group would break into different residential properties armed with pistols and rob complainants of their valuables mainly cash, laptops, cellphones and electronic gadgets. On the 11th of November at around 1600 hours, detectives from the Criminal Investigation Department, Beitbridge received a tip-off that the applicants and their co-accused were committing a series of armed robbery cases in Beitbridge. Upon their arrest the applicants and their associates were found in possession of an assortment of stolen goods including an FN pistol which they acquired by means of robbing one Nyasha Mhlanga. The applicants were linked to these offences through the recovery of stolen items that included a

souvenir watch recovered from the 2nd applicant. A Macbook Laptop was recovered from 1st applicant. Weapons used during the commission of the offence which included an axe, a bolt cutter, and FN pistol were all recovered from the applicants. A Toyota Wish motor vehicle Registration number AFO 6242, a Mark X motor vehicle, a Nissan Caravan vehicle registration number AFO 9137 which are alleged to be proceeds of crime and used as gateway vehicles were recovered from applicants. Applicants made indications on all the armed robbery cases and how they committed these offences. The indications were recorded on video. Police Investigations reveal that applicants and their colleagues have pending cases at court (Masvingo CR 123/09/21, Chikato CR 122/09/21, 124/09/21 and Zvishavane CR 50 & 55/11/21. I directed state and defence counsel to confirm whether the applicants were indeed linked to these cases of armed robbery. At the hearing of the bail application *Mr Nyathi*, appearing for the state did confirm that he had communicated with ZRP Chikato and Criminal Investigations Department, Zvishavane who confirmed that applicants were indeed facing criminal charges of a similar nature in both Masvingo and Zvishavane.

Submissions by the Applicants

The applicants contend that they are suitable candidates for bail. *Mr Mhandire*, appearing for the applicants argued that none of the applicants had been convicted of any crime. He argued that the presumption of innocence operates in favour of the applicants. It was argued on behalf of the applicants that they are all being falsely implicated and that the police did not specify from whom the recovered items were found. Applicants argue that bail is a right guaranteed in terms of the law and that there were no compelling circumstances for denying the applicants bail pending their trial. Applicants aver that they are of fixed abode. First applicant is self employed as a vendor operating at Ngundu Growth Point. 2nd applicant is a gold panner operating in the Shurugwi area. He resides at Madziva Village, Chief Gororo, Masvingo.

Submissions by the respondent

The state argues that applicants have not shown that they are good candidates for bail. Both applicants are linked to the offences. 1st applicant was found in possession of a Macbook Laptop stolen during a robbery at house number 1161 medium density, Beitbridge. 2nd applicant was found in possession of a souvenir watch stolen during a robbery at 1218 Medium Density, Beitbridge on the 9th October 2021. The state avers that the applicants

attempted to flee during their arrest and that if they are granted bail they will abscond. Bail is opposed on the grounds that there is a strong *prima facie* case against the applicants. If convicted the applicants face lengthy custodial sentences. The likelihood of custodial sentences is likely to induce the applicants to abscond. Both applicants in this matter have not proffered any defence on how they got possession of the items linked to the robberies. The state has placed credible information before the court indicating that they have pending criminal cases of a similar nature in Masvingo and Zvishavane. The state has indicated that their co-accused one Arnold Musimudziwa was indeed granted bail after it was shown that he was not linked to these offences.

Whether the applicants are suitable candidates for bail

In terms of section 50 of the Constitution of Zimbabwe an accused person is entitled to bail pending trial. An accused will not be released on bail where there exist compelling reasons not to grant bail. See: *S v Munsaka* HB 55-16. It is now settled law that an applicant seeking release on bail must advance a defence which is reasonably possible true. See: *Dube v The State* HB 206-18. In this matter the applicants have not denied that they were found in possession of property stolen during robberies.

The applicants are placed at the scenes of the crimes through the recovered stolen property. The applicants may not therefore proffer bare denials in the face of such serious allegations. In *Jongwe v State* SC 62-02 the court held that where the state case against the accused is strong coupled with a high likelihood that they may be convicted and sentenced to a long prison sentence, chances of abscondment are real. The Investigating Officer has indicated that applicants have pending cases of a similar nature. Even if the presumption of innocence still operates in their favour because they have not yet been convicted, the *modus operandi* in the commission of the robberies is similar and the number of counts they are facing shows that applicants may commit similar offences if bail is granted. The Investigating Officer alleges that applicants attempted to flee during their arrest and that they are a flight risk. This assertion by the police was not challenged by the applicants.

I am satisfied, that on the facts placed before the court, the applicants are indeed a flight risk and are not suitable candidates for bail.

In the result, and accordingly, the following order is made:

1. The application for bail be and is hereby dismissed.

Masawi and Partners, applicants' legal practitioners
National Prosecuting Authority, respondent's legal practitioners