

**CANAAN TSHUMA**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 12 & 26 MAY 2022

**Bail application**

*L. Mcijo* for the applicant

*T. Muduna* for the respondent

**MAKONESE J:** This is an application for bail pending trial. The applicant faces one count of possession of a specially protected trophy in contravention of s45 of Parks and Wildlife Act (Chapter 20:14) as read with s 128(b) of the Act and s 11 of the General Law Amendment Laws No. 5/2011, that is, possession of 26 pangolin scales. The applicant denies the allegations. The state opposes the application for bail on the grounds that there are compelling reasons for applicant's continued detention.

The brief facts surrounding this matter are that on 28<sup>th</sup> March 2022 at around 14:30 hours detectives from the Criminal Investigations Department, Minerals, Flora and Fauna Unit, Bulawayo were on patrol when they stopped and searched the applicant along a road in Burnside, Bulawayo. The detectives recovered 26 pangolin scales from the applicant's left inside jacket pocket which he was wearing. The scales were wrapped in a black plastic paper. Applicant was asked to produce a permit for the possession of the pangolin scales but failed to do so. The pangolin scales were taken to an Ecologist who confirmed that the scales indeed were pangolin scales. The scales were weighed and their weight was recorded as 0.166kgs. The value of the scales was placed at US\$5 000. The state alleges that applicant had no right to possess the scales. The state contends that applicant has no recognizable defence to the charge against him. The state submits that the evidence against the applicant is overwhelming and if granted bail he may be tempted to abscond in view of the lengthy prison sentence he is facing upon conviction. The offence which the accused is facing attracts a mandatory sentence of 9 years.

Applicant avers that he is a suitable candidate for bail. He contends that he has a valid defence to the allegations against him. He submits that his defence is that the pangolin scales recovered from him did not belong to him, but to one Justice Mangombe a friend of his who resides in Emakhandeni. Applicant avers that a day before his arrest he went out for a beer drink at Emakhandeni where he met Mangombe. They drank beer until late in the night when he then looked for transport into town. Applicant was on his way back to his residence in Burnside when he was confronted by police detectives. Applicant contends that whilst he was waiting for transport, it was a bit cold and he asked for a jacket from Mangombe, promising to return it the following day. The arrangement was that applicant would return the jacket to Mangombe the following day. Applicant avers that he lacked the requisite *mens rea* to commit the offence as he was not even aware that the jacket contained pangolin scales.

Naturally, the said Mangombe has not tendered into the record an affidavit confirming the applicant's story. If indeed, Mangombe was the owner of the scales he would have laid a claim over them if his possession of the scale was legal.

In applications of this nature the applicant is required to place before the court such information as would establish a recognizable defence at law. What this entails is that the defence proffered by the applicant must be reasonably probable and believable to any ordinary right thinking person. The defence must not be a far-fetched and unbelievable version of the events. See *S v Ndlovu* 2001(2) ZLR 26.

On the facts of this matter, the applicant's defence appears contrived. Pangolin scales are not any ordinary articles that could find themselves into someone's jacket without him knowing. The applicant's stance in this application is that the state must disprove his defence for his version to be rejected.

I observe here that the principles in these applications are now well established. The overriding principle is that where the interests of justice would be compromised bail should be denied. The state has established a strong *prima facie* case against the applicant. The applicant's explanation in so far as possession is concerned cannot be said to be reasonably possible true. His defence amounts to a bare denial. For these reasons and bearing in mind the likely penalty in the event of a conviction there are compelling reasons for the denial of bail.

In the circumstances, the application for bail pending trial is hereby dismissed.

*Liberty Mcijo & Associates*, applicant's legal practitioners  
*National Prosecuting Authority*, respondent's legal practitioners