

ARTHUR NHLIZIYO

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 26 NOVEMBER 2021 AND 13 JANUARY 2022

Bail Application

B.M Siansole, for the applicant
T. Muduma, for the respondent

MOYO J: This is an application for bail pending trial. At the hearing of the application I dismissed it *ex tempore*. The applicant has requested for full reasons. Here are they.

The applicant faces a charge of armed robbery. He was remanded in custody from 21 October 2021. He submits that he is a suitable candidate for bail and that the presumption of innocence operates in his favour. He further submits that he is not a flight risk as he is of fixed abode. He also submits that he has a defence to the allegations levelled against him. In essence his defence is that he never robbed anyone and that at the material time he was at his homestead in Filabusi while the robbery is alleged to have occurred in Fatima, hundreds of kilometres away.

The facts of the matter are that 2 trucks were hijacked at gunpoint along Victoria Falls Road near Fatima mission. One of the hijacked trailers was then found at applicant's homestead. Applicant avers that he is just a mechanic who fixes cars and that the people who brought the trucks usually brought vehicles for repair by him. The state further alleges that the stolen property was recovered at accused's homestead as well as some complainant's belongings like passports. The state also alleges that there are witnesses who were hired by applicant to offload the hijacked trucks. The state also avers that it has overwhelming evidence in the form of applicant's fingerprints uplifted at the scene of crime.

Applicant denies all these averments by the state and insists that he was not part of the hijack plan but that he did attend to the trucks at his homestead as a mechanic. In such a case,

whilst the presumption of innocence works in favour of the applicant at this stage, the court clearly has to assess the strengths and weaknesses in either case, that is the defence case and the state case in order to properly weigh the risk to abscond as against the willingness to stand trial by the applicant.

From the averments made by the state, clearly the state case is *prima facie* strong. Armed robbery is a serious offence that carries with it a lengthy custodial term in the event of a conviction. The risk to abscond naturally derives from such circumstances. Refer to the case of *S v Jongwe* SC 62-2002 wherein the former Chief Justice quoted with approval the sentiments expressed by the court in *Aitken v the State*.

“In judging the risk the court ascribes to the accused’s ordinary motives and fears that sway human nature. Accordingly it is guided by the character of the charges and the penalties which in all probability would be imposed if convicted, the strength of the state case”

The state case being *prima facie* strong, and the risk to abscond, naturally following such a fact, clearly it would not be in the interests of justice to release the applicant at this juncture in my view. The interests of justice may be jeopardised by applicant’s release on bail. Clearly, the state case is *prima facie* strong. There seemingly is overwhelming evidence against the applicant. From his submissions, the applicant disputes the averments made by the state, but this court, not sitting as a trial court cannot summarily dismiss the averments the state is making for if witnesses are called at trial to vouch for the averments by the state, and that is done successfully, a conviction is likely. Following the conviction is obviously a lengthy custodial sentence hence the increased risk to abscond and failure to stand trial. Whilst conditions can be imposed in certain situations to minimise the risk to abscond, in some cases there can be no adequate conditions to stifle the fear of a lengthy custodial sentence following conviction especially in cases like this one where the state case is *prima facie* strong.

It is for these reasons that I found that applicant is not a suitable candidate for bail and I consequently dismissed his application.

Dube, Mguni and Dube, applicant’s legal practitioners
National Prosecuting Authority, respondent’s legal practitioners