

WITNESS TAMISAYI  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
FOROMA J  
HARARE, 9 and 28 June 2021

### **Bail Ruling**

*A Gate*, for the applicant  
*R Nyamombe*, for the respondent

FOROMA J: This is an application for bail pending trial by the applicant who was placed on remand on allegations of robbery it being alleged that he and 4 of his accomplices fully dressed in army uniform robbed the 80 year old female complainant at her Kadoma residence whose house they pretended to be searching for weapons of war pursuant to a search warrant they allegedly produced. Applicant and his accomplices disarmed complainant's guard of a firearm (revolver) which they immediately used to threaten the complainant and members of her household into submission and tied them and locked them into a toilet before ransacking the house of expensive jewellery cell phones and forex (US10 000 and ZAR20 000) before speeding off in complainant's vehicle which they dumped near Chegutu. Applicant was implicated by one Zephania Munyuki a member of the ZNA. On his placement on remand applicant complained that he had been badly assaulted by the police using a sjambok and he needed to be afforded medical attention. Applicant was placed on remand all the same and the magistrate directed the prosecutors to investigate the complaints of assault by applicant.

Applicant has applied to this court for bail pending trial. In the bail statement applicant denied any involvement in the robbery and attributes implication by his co-accused Munyuchi to bad blood on account of an unpaid loan advanced to the co-accused when he needed money to get his sick child treated. The child had since died. At the time applicant was placed on remand police indicated they opposed bail on the basis that the accused might abscond. The investigating officer deposed to an affidavit on 6 May 2021 in terms of which he claimed that on arrest applicant admitted to the charge and made positive indications in the presence of complainants. In his bail statement applicant did not comment on the alleged admission save that he denied having made any indications which he claimed were done by the co-accused found in possession of the

complaint's revolver. Applicant raised an *alibi* defence and at the hearing on 4 June 2021 applicant's counsel undertook to produce evidence in support of the *alibi* on 9 June 2021 the date to which the matter was postponed for argument by CHAREWA J. On 3 June applicant filed a supplementary bail statement where he argued his *alibi* defence but did not produce any evidence.

When the matter was argued before me on the 9 June 2021 no evidence was produced in support of the applicant's *alibi* thus his case remained anchored on his bail application statement. The applicant's application was therefore not strengthened by the promised evidence of an *alibi* but considerably weakened by the undisputed or unexplained admission as claimed by the investigating officer on oath. It is significant to note that the Investigating officer's affidavit was produced by the applicant as part of the documents in support of his application for bail.

Whether or not the admission will stand the test at trial is not a matter for this court. However the fact that the applicant did not expressly dispute it lends credence to the strength of the state case against him for now. It is worth noting that applicant claims that he co-operated with the police after his arrest. For this reason applicant's claim that he was badly assaulted by the police becomes a bit difficult to understand. Why would the police put pressure on a co-operative accused by assaulting him as claimed? Applicant claims that the only evidence there is against him is that of implication by a co-accused which is not admissible for purposes of a conviction. In *casu* the state evidence is not merely that of implication but admission, and indications in the presence of the complainants even though the applicant disputes the alleged indications.

In the circumstances the alleged and apparently undisputed admission coupled with evidence of indications makes the state case very strong and when that is considered together with the seriousness of the charge of robbery which I must add can well be amended to armed robbery the risk of applicant absconding if released on bail becomes a compelling reality. Applicant risks a conviction followed by a substantial sentence of imprisonment which provides an incentive to abscond. In the circumstances the court finds that applicant is a flight risk

Therefore the applicant is not a proper candidate for bail and his application is accordingly dismissed.