

PRINCE MUTIKANI
and
LUCKSON MUKACHI
and
AMOS DHANI
and
SIMBARASHE MANZUNZU
versus
THE STATE

HIGH COURT OF ZIMBABWE
MHURI J
HARARE, 30 August 2021

Mr *J. Mangeyi*, for the appellant
Ms *S. Maunganidze*, for the respondent

MHURI J: This is an appeal against magistrate's refusal to grant bail in terms of s 121(1)(b) of the Criminal Procedure and Evidence Act [Chapter 9:07].

In appeals such as this one, an appellate court will only interfere with the magistrate's decision only if the magistrate committed an irregularity or misdirection or if the magistrate exercised her discretion unreasonably or improperly to vitiate her discretion – *S v Malunjwa* 2003(1) ZLR 276(H) – *AG v Siwela* SC 20/17

In *casu*, appellants appeared before a magistrate facing two counts of robbery. They applied for bail before the magistrate which application was opposed by the state. The magistrate denied to grant appellants bail on the ground that the state had submitted compelling reasons warranting the denial of bail.

Placed before the magistrate for consideration whether or not to grant bail were the investigating officer's grounds for opposing bail stipulated on the attachment to the request for remand form (form 242). These were that:

All the accused persons are likely to abscond in view of the gravity of the offence and the penalty the offences carry.

The accused persons reside in the same area with some of the witnesses hence, if granted bail the accused persons are likely to interfere with the witnesses.

Accused persons' accomplices are still at large and if granted bail they may team up and continue committing similar offences.

Accused persons are illegal gold panners who move from one place to another in search of gold hence are likely to abscond.

In his oral submissions, the prosecutor stated the grounds that there is overwhelming evidence showing that the accused persons committed the offences. The complainant identified the accused persons at the scene of crime. The accused persons committed the same offence on different days so if they are to be granted bail, there is a likelihood of them committing the same offences.

Appellants' arguments were that there were no compelling reasons to deny, them bail. The State's case was weak, they did not commit the offences, they are of fixed abode hence they will not abscond.

Faced with the information before her, the magistrate found that the State had indeed proffered compelling reasons to warrant denial of bail even if bail was every accused's person's constitutional right.

The question that arises is, was there any irregularity or misdirections committed by the magistrate in denying bail. Did the magistrate exercise her discretion unreasonably? Which misdirection or irregularity or injudicious exercise of discretion would warrant interference by this court. I do not think so.

The magistrate had a duty to weigh the interests of the appellants and that of the criminal justice system in particular the bail system.

In the exercise of her discretion she denied the appellants bail. I do not find that the exercise of discretion was unreasonable. She believed the State's submissions proffered as compelling reasons, the strength of the State case, the length of the custodial sentence, being identified by complainants all this motivating the likelihood to abscond, and interfere with State witnesses. Section 117(2)(a) of the Criminal Procedure & Evidence Act [*Chapter 9:07*] enjoins the court to consider these when considering an application for bail. I do not find any irregularity or misdirection on the part of the magistrate.

I therefore do not find basis to interfere with the magistrate's decision.

To that end, the appeal fails. It is therefore ordered that the appeal be and is hereby dismissed.

Mangeyi Law Chambers, appellant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners