

ARNOLD MUTETEPI  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
MHURI J  
HARARE, 20 & 1 September 2021

### **Bail application**

Ms *C Mashura*, for the applicant  
A. *Masamha*, for the respondent

MHURI J: This is an application for bail pending trial. Applicant was arraigned before the magistrate's court facing three offences namely;

1. Robbery as defined in s 126 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]
2. Conspiracy to commit Robbery as defined in s 188 as read with s 126 of the Criminal Law (Codification and Reform) Act
3. Unlawful possession of a firearm as defined in s4 (1) of the Firearms Act [*Chapter 10:09*]

The allegations in brief were that, on 24 of June 2021 at around 0030 hours, applicant, in the company of Batsirai Hwodzi, Tendai Mubatapasango and others acting in common purpose and armed with pistols, iron bars and an axe proceeded to Velvet service station in Chitungwiza whereupon they confronted the security guard Silas Mabika. They threatened him and struck him on the legs, left arm and head with an axe and also tied his hands and legs using an electric cable and handcuffs. They then stole a 7.65mm FBM39 Tokarev pistol serial number PK09202 loaded with 7 live rounds of ammunition. Applicant and his accomplices then broke into the offices where they stole 3 comforters, first aid kit, safety shoes, 2cases of soft drinks, DVR and its monitor.

On 12 July 2021, applicant and his accomplices, B Hwodzi, T Mubatapasango, L Madondo, J Bangu, Munyaradzo Hodzi and Paddy in pursuance of their plan to commit a robbery at Dalston Farm in Mutorashanga drove to Mutorashanga in a Honda Fit registration number ACN3408. They were armed with a pistol PK09202, a hammer and a bolt cutter. While driving along Raffingora road, they were intercepted by the Police at whom they opened fire and the Police fired back. The applicant and his accomplices stopped their car and fled in different directions. The Police managed to apprehend B Hodzi who had been shot on the left leg. In the motor vehicle, the Police recovered the pistol which was loaded with 5 rounds of ammunition. Hodzi implicated applicant and Mubatapasango leading to their arrest on the 14<sup>th</sup> of July 2021.

On the 12<sup>th</sup> July 2021, along Raffingora road applicant was in possession of a 7.65mm FBM39 Tokarev pistol serial number PK09202 loaded with 5 rounds of ammunition without a valid licence. The pistol was intended to be used in a robbery at Mutorashanga.

In his bail statement, applicant denies *in toto* committing all the three offences. He stated that he was nowhere near the scenes of crime as he was at his workplace on duty at Two Brigade Presidential Guard Barracks. He stated that there is no risk of him endangering the safety of the Public or any particular person. Being a member of the army, he is in fact a custodian of the safety of the public, that there is no possibility of him absconding as he is of fixed abode, has a family and is in the service where he was arrested from. He further stated that he will not interfere with any witness or investigations as he did not commit any offence and by now the Police should be through with their investigations.

The State is strongly opposed to the application for bail being granted. Its grounds of opposing bail are that, the allegations are very serious and applicant is strongly linked to the allegations, it is feared that he will abscond if released on bail. That, in the event that he is convicted, he will be visited with a severe prison term. This is an inducement to abscond. It was also the State's other ground that applicant was closely linked to the allegations as he has not given an explanation regarding the gunshot wound which the Police observed on him and neither did he give an explanation of his whereabouts on the day in question.

In the request for remand form (Form 242) the Investigating Officer opposed bail on the grounds that, the applicant escaped arrest during a shootout with the Police in Mutorashanga and was only arrested two days later. He is therefore a flight risk. Applicant is likely to interfere with

evidence as the property has not yet been recovered. As a trained soldier, there are high chances that if released on bail, applicant will intimidate or threaten witnesses. Applicant's other accomplices are still at large and if granted bail they will team up and continue committing similar offences.

To bolster its grounds of opposition, the State called both the arresting detail and the investigating officer to give evidence. The arresting detail by the name of Adrington Chikerema submitted that he is still opposed to bail on the basis that the applicant is a flight risk. He submitted that when they attended the initial scene they were informed that there was a group of armed robbers who were going to rob a certain white farmer in Mutorashanga. The robbers were driving a white Honda fit. He and other police detectives drove to Mutorashanga where they managed to spot the motor vehicle. They blocked its way and the police dog handlers disembarked from their motor vehicle so they could identify themselves. On noticing that they were police officers, the applicant and his accomplices started firing shots at them and in turn they responded by firing back. Applicant and accomplices managed to drive for some 100 metres still firing their fire arms. They then went into a ditch and started to run in all directions into the thicket. He blocked applicant and tripped him to the ground but before he could apprehend applicant the dogs ran towards them and applicant ran away into the thicket. The police officers followed and managed to apprehend Hodzi who had been shot on the knee. They took him to the motor vehicle and found a hammer, pistol loaded with five rounds of bullets, one being in the chamber and a bolt cutter. He further submitted that upon interviewing Hodzi, Hodzi confirmed that they wanted to rob a farmer in Mutorashanga and that information they got from a security guard who is at that farm. He said he knew applicant as a soldier and another soldier by the name Chitemerere. They then impounded the motor vehicle and travelled to the said farm where they arrested the security guard Mubatapasango. A few minutes later, Hodzi received a call from applicant and they asked him to put it on loud speaker so that they could hear their conversation. Applicant asked Hodzi if he was safe to which he answered that he was. Applicant asked if anyone had been arrested to which he answered that he was not aware. Applicant told Hodzi that he had a wound on his rib cage though it was not serious, but was bleeding. He said he was lucky to survive the gun shot.

He submitted further that after some days, they engaged the Zimbabwe National Army and were told that applicant was at 2 Brigade where he was at a school. They then went to 2 brigade

Dzivarasekwa together with other soldiers who managed to identify applicant and arrested him. They carried a body search on applicant and saw that he had a wound on his rib cage. They interviewed him in the presence of his superiors but he denied planning to commit the robbery, but admitted that he was at the scene when police fired. He said that he had gone to Chiweshe and when coming back he boarded the Honda Fit and noticed that some of the occupants were his workmates and local people. He said that when police fired shots he thought that they were robbers so he had to escape. He submitted that he is opposed to bail because the applicant escaped at the crime scene, he is therefore likely to abscond. His accomplices are still on the run including another soldier, and he is likely to commit similar offenses with them.

The state also called the investigating officer Veronica Jangano who submitted that applicant is linked to the Mutorashanga robbery in that in the motor vehicle he was in on their way to Mutorashanga was recovered a pistol from the Chitungwiza robbery. She submitted that applicant should not be admitted to bail because that allegations are serious, his accomplices are not yet arrested, and therefore they would team up and commit similar offences. Granting him bail even on stringent conditions would give an impression that if one commits such a crime they would be let out on bail. She further submitted that there are many soldiers who stay in Epworth and therefore there was no way Hodzi could have mentioned any of them save for a person he was involved with.

It is a trite position of the law that an accused person is presumed innocent until proven guilty. See s 70 (1) (a) of the Constitution of Zimbabwe which reads as follows:-

1. “Any person accused of an offense has the following rights—
  - a) To be presumed innocent until proved guilty...”

Section 50 (1) (d) provides that any person who is arrested must be released unconditionally or on reasonable conditions, pending a charge or trial, unless there are compelling reasons justifying their continued detention.

Section 117 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] provides as follows:-

- (1) Subject to this section and section 32, a person who is in custody in respect of an offense shall be entitled to be released on bail at any time after he or she has appeared in court on a charge and before sentence is imposed unless the court finds that it is in the interest of justice that he or she should be detained in custody.
- (2) The refusal to grant bail and the detention of an accused in custody shall be in the interest of justice where one or more of the following grounds are established
  - (a) “Where there is a likelihood that the accused, if he or she were released on bail will-

- (i) Endanger the safety of the public or any particular person or will commit an offense referred to in the first schedule; or
  - (ii) Not stand his or her trial or appear to receive sentence; or
  - (iii) Attempt to influence or intimidate witnesses or to conceal or destroy evidence; or
  - (iv) Undermine or jeopardise the objectives or proper functioning of the criminal justice system including the bail system or
- (b) .....

In *Casu*, I find that there are compelling reasons not to grant bail. Admittedly, seriousness of the offense on its own cannot be a ground to deny bail but where it is coupled by other factors bail may not be granted. Applicant is facing serious offenses which attract a lengthy prison term and this would motivate him to abscond. As submitted by the arresting detail, the applicant did not deny being at the scene of the shoot-out, stating that he boarded the Honda fit in which he saw workmates and local people and that when the police started shooting he thought that they were robbers and therefore he escaped. The pistol which was stolen from Chitungwiza during the robbery at velvet service station was recovered in this same motor vehicle in which applicant boarded. He also had a wound on his rib cage. The arresting detail also witnessed the conversation between applicant and Hodzi wherein applicant was enquiring as to whether anyone had been arrested, injured and stated that he was lucky to be alive since he had a graze on his rib cage. On the basis of this, I am persuaded that the state has a strong case against applicant which certainly would make him a flight risk. I am also persuaded by the State’s submission that there are fears that if granted bail there is a likelihood that applicant will team up with the accomplices who are still at large and commit further offenses. Chitemerere a fellow soldier according to the investigating officer is absent without official leave and is nowhere to be found.

In the circumstances therefore, I find that applicant is not a good candidate to grant bail. The application for bail pending trial is therefore dismissed.

*Pundu & Company*, Applicant’s Legal Practitioners.  
*National Prosecuting Authority*, Respondent’s Counsel.