

CRIVE KADAMBURE  
and  
EDMORE MANUWERE  
and  
WONDER TAWANDA KWARAMBA  
and  
PATRICK CHIRARA  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
CHIKOWERO J  
HARARE, 26 August 2021 & 15 September 2021

### **Bail Application**

*F Murisi* for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants  
*Z Dhumbura*, for the 4<sup>th</sup> applicant  
*A Masamha* with *M Mutamangira* for the respondent

CHIKOWERO J: This is a composite judgment pursuant to bail applications launched by the applicants.

Each applicant is on remand on separate charges of contravening s 14(1) of the Firearms Act [Chapter 10:09]. For purposes of the bail applications, and with the consent of counsel, the matters were consolidated because it was convenient to do so.

Ronald Musekiwa is the investigating officer in the case against the 4<sup>th</sup> applicant. He is also a member of the investigating team in the other three matters. Being privy to the facts and circumstances of the four matters, he testified in opposition to the applicants' bid to be released on

bail. He was subjected to grueling cross-examination after which the lead counsel for the respondent, Mr *Masamha*, put questions to him in re-examination. I received oral submissions, whereupon I reserved judgment.

Section 14 of the Firearms Act [*Chapter 10:09*] reads as follows:

“14 Penalty for dealing in firearms without being registered.

(1) Subject to this section no person shall, by way of trade or business:-

- a) Sell, transfer, repair, test or prove; or
- b) Accept for sale or transfer or have in his possession for sale, transfer, repair, test or proof; any firearm or ammunition unless he is registered under this Act as a firearm dealer:

(2) If any person contravenes subsection

- (1) ..... he shall be guilty of an offence and liable to a fine exceeding level nine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.”

The definition section of the same Act defines a “firearms dealer” as well as “transferring” in the context of dealing in firearms.

As for a “firearms dealer” section 2 of the Act defines such as follows:

“means a person who by way of trade or business sells, transfers, repairs, tests or proves firearms or ammunition”

In respect of “transferring” the meaning includes letting on hire, giving, lending and parting with possession.

The applicants are all alleged to have dealt in firearms when none of them is a registered firearms dealer, hence contravening s 14(1) of the Act. The circumstances set out in the respective request for remand forms are that each applicant, during the period spanning from 2016 to August 2021, acquired fake firearms certificates in his name and used these to purchase different high caliber rifles from different registered firearms dealers. The applicants then sold the rifles to poachers and armed robbers. Some of the firearms were smuggled out the country. The type and serial number of each rifle is mentioned in the annexures to the request for remand forms. Those

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annexures are attached to the respondent's written responses to the bail applications. The annexures reflect the dates when each firearm was bought by each applicant as well as the registered firearms dealer from whom each such purchase was made.

The first applicant is facing nine counts. They are spread as follows: one, three, one and four counts in 2016, 2017, 2018 and 2021 respectively. A total of nine high caliber rifles form the subject of the nine counts. Three different firearms dealers are said to have sold these rifles to the first applicant.

Twenty counts were preferred against the second applicant: four, eight, two, five and one as having been committed in 2016, 2017, 2018, 2020 and 2021 respectively. Five firearms dealers are said to have sold the firearms to the second applicant. Twenty high caliber rifles are what this applicant is alleged to have bought and proceeded to sell. The purchasers are said to have been poachers and armed robbers. Some of the rifles are alleged to have been smuggled out of the country.

The third applicant is facing seventeen counts. Seventeen high calibre rifles are involved. Two, six, three, four and two counts arise from alleged dealings in firearms in 2016, 2017, 2019, 2020 and 2021 respectively. In addition to those firearms alleged to have been smuggled out of the country, some are said to have been sold to poachers and armed robbers. Three registered firearms dealers allegedly sold the rifles to this applicant.

Finally, the fourth applicant is charged with nine counts. Seven counts relate to alleged dealing in firearms in 2019 with two being for 2021. Nine high calibre rifles were involved, with two registered firearms dealers said to have sold the firearms to this applicant.

The net effect is that, between them, the applicants are alleged to have used fake firearms certificates to purchase and collect and ultimately sell fifty-five high calibre rifles.

None of the applicants challenged their placement on remand. I therefore proceed on the basis that the allegations set out in the request for remand forms disclose offences against each

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applicant and that they are linked to such offences. To the extent that Mr *Murisi's* cross-examination of the respondent's witness was meant to demonstrate that wrong charges were preferred against the first, second and third applicants such questions and the answers thereto are not material for the purposes of determining this bail application. The same applies to counsel's submissions to the same effect.

With the exception of the fourth applicant, the applicants did not dispute that they purchased the firearms attributed to them. It was common cause at the hearing that all the fifty-five high calibre rifles were not recovered by the police. Investigations are in progress to endeavour to recover those firearms. It becomes common cause that the police are still to identify the persons to whom these firearms were sold. The allegations that these firearms were sold to poachers, armed robbers and some of them smuggled out of the country was not backed up with any evidence. Those allegations constitute information the police are working on in an endeavour to establish the identity of the persons to whom the firearms were disposed to. The bottom line, however, is that the applicants no longer have the firearms in their possession. Individuals who purchase firearms must secure the same in gun cabinets. The applicants were unable to lead the police to recover these firearms. They are unaccounted for.

It is with the foregoing in mind that I examine this matter to determine whether the applicants are suitable candidates for bail.

WHETHER THE APPLICANTS WILL ATTEMPT TO INFLUENCE OR INTIMIDATE WITNESSES OR TO CONCEAL OR DESTROY EVIDENCE IF THEY WERE TO BE RELEASED ON BAIL

The Firearms Act [*Chapter 10:19*] is a statute to regulate the purchase, possession, manufacture and sale of firearms and ammunition and other transactions.

This means that there would be a paper trail accompanying the lawful purchase, possession, sale or other disposal of a firearm.

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The evidence sections of the Request for Remand Forms reflect that the respondent will rely on the following evidence at the trial of the applicants.

- the alleged fake firearm certificates that were used by the applicants when they purchased the firearms. It matters not in my view that none of these documents were produced by the respondent at the bail hearing. A bail application is not a trial. It suffices in my view that the respondent alleges that these documents are fake and that they were used by the applicants in the process of purchasing and collecting the firearms from the registered firearms dealers.
- the registers of the firearms dealers reflecting the transactions involving the applicants.
- oral testimony from the staff of the firearms dealers speaking to the sale of the firearms to the applicants.
- oral testimony from employees at the central firearms registry who will speak to the absence of files relating to all the firearms.

If the above were all the evidence against the applicants imposition of a condition that the applicants should not interfere with the respondent's witnesses and the evidence might have sufficed to allay the danger of interference.

I hold the view that the applicants will interfere with investigations and the witnesses, if they are released on bail. The first applicant is an inspector in the Zimbabwe Republic Police in charge of the Police Provincial Armoury in Chinhoyi. He is particularly placed to interfere with investigations relating not only to the charges preferred against him but those in respect of the other applicants.

The second applicant, a business-person, is a cousin to the first applicant and stays together with the latter. The house in question belongs to the first applicant. The third applicant, a former member of the Zimbabwe Republic Police, resided at the Ross Camp in Bulawayo at the time of the commission of the offence and was assigned to the Provincial Armoury in Bulawayo.

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Despite the fact that the third applicant resigned two years ago, six out of the seventeen counts he is facing are alleged to have been committed after he had left police service. This speaks to his influence.

The uncontested evidence of the respondent's witness is that the shooting range of the fifty rifles is six hundred meters to one kilometre. These are lethal weapons. That there is no paper trail indicating how the applicants disposed of such a huge number of high calibre rifles and that they have not disclosed how such disposal was effected and to who means I am unable to accept their bare undertakings that they will not interfere with the persons to whom they disposed the firearms. They have chosen not to disclose who these persons are. I take the view that in these circumstances they will interfere with those persons if released on bail.

I have also taken the following evidence into account. Some of the fake certificates, already bearing the applicants' names, reflect fictitious addresses. Further, some of the addresses, though existent, are of persons who had nothing to do about the purchase of the firearms.

It is in the interest of the proper administration of justice that the police be afforded the opportunity to endeavour to recover the fifty-five high caliber rifles, or some of them, as well as tracing and interviewing the persons to whom those firearms were disposed to, unhindered. I do not think that the respondent's witness asked for too much when he said the police needed two to three weeks to conclude their investigations. There can be no doubt that extensive investigations are required.

I agree that the bail application of the fourth applicant stands on a somewhat different footing. The respondent's witness testified that the registered firearms dealers told the investigating team that they did not deal with this applicant even though the relevant fake firearms certificates bore the fourth applicant's name. It is said that the dealers did not know the fourth applicant. It is not him who collected the firearms attributed to him. It is for this reason that the respondent's witness testified that at the present stage in police investigations there are indications

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that the fourth applicant might be converted to a state witness. His defence is basically that he is a victim of identity theft. He enlisted the assistance of the first applicant in applying for and obtaining a 7.65mm FN Browning pistol serial number 270290 for protection of cash, bullion and other valuables in transit.

He handed up his national registration card, among other documents, to the first applicant. to facilitate the application for issuance of the FN pistol. That application was successful. The result was that the first applicant handed up this particular pistol to the fourth applicant. It occurs to the fourth applicant that the first applicant then proceeded to use the former's details to illegally purchase and sell the nine high caliber rifles that form the subject of the instant charges. Such dealing was without the fourth applicant's knowledge and consent.

The above notwithstanding, I share the view of the respondent that it would be premature to see no real risk of the applicant interfering with the investigations. There is still a lot which remains unknown. The circumstances suggest the work of a criminal syndicate involving such of the members of the police force who, in this case, come in the names of first and third applicants. The fourth applicant is linked to the first applicant.

I would dismiss the bail application in respect of all the applicants on the basis that they will interfere with investigations, evidence and state witnesses.

Out of abundance of caution, I will consider other grounds. They lead me to the same conclusion.

WHETHER THE RELEASE OF THE APPLICANTS WILL DISTURB THE PUBLIC ORDER OR UNDERMINE PUBLIC PEACE OR SECURITY?

The nature of this offence and the circumstances under which it was committed is likely to induce a sense of shock or outrage among members of the public if applicants were to be released on bail. I agree that fifty-five high caliber rifles are not consumables. They cannot just vanish into thin air. The first, second and third applicants did not dispute purchasing forty-six out of these

fifty-five rifles. But they chose neither to cooperate in efforts to recover same nor to explain to the court how they disposed of the same. I accept that they are presumed to be innocent. I accept also that they have a right to remain silent at the trial. Still, the fact remains that such a huge number of firearms remains unaccounted for, by them. I think the public would be shocked or outraged if the court were to proceed to release them on bail nonetheless.

In my judgment, the sense of peace and security among members of the public will be undermined or jeopardized by the release of the applicants. This is so because, even at bail hearing stage, the picture which is before me is that fifty-five high caliber firearms have fallen into wrong hands. I agree with Mr *Masamha* that I should take judicial notice of the surge in cases of robbery committed using firearms, both registered and unregistered. This I have done.

The criminal law is not only for those accused of contravening its dictates. There is need to balance that against the society's legitimate concerns. In that process of weighing the scales of justice it is my view that the release of the applicants will undermine or jeopardise the public confidence in the criminal justice system.

#### OTHER CONSIDERATIONS

I am satisfied that the release of the applicants will endanger the safety of the public. The dealing in firearms is regulated by law. I consider that the safety of the public would be endangered by the release of the applicants. This is so because the facts which are not in dispute have placed them, on a balance of probabilities, in a chain of persons supplying firearms to unknown persons, and for purposes unknown. It is for this reason that I accept that the release of the applicants on bail compromises not only the safety of the public but the security of the state.

Further, the multiplicity of the counts preferred against each applicant convinces me that the applicants have a disposition of committing offences of a similar nature. The second applicant's cause is not helped by the fact that he has a relevant previous conviction.

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In view of my conclusion that the bail application fails on the grounds discussed above, it becomes unnecessary for me to consider whether the applicants, if released on bail, will not stand trial or appear to receive sentence.

ORDER

The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> applicants' application for bail pending trial be and is dismissed.

*Murisi and Partners*, 1<sup>st</sup> -3<sup>rd</sup> applicant's legal practitioners

*Zimudzi and Associates*, 4<sup>th</sup> applicant's legal practitioners

*The National Prosecuting Authority*, respondent's legal practitioners