

TINASHE TANAKA MARIMIRA
versus
THE STATE

HIGH COURT OF ZIMBABWE
MUSITHU J
HARARE, 10, 13, 20 December 2019, 15 and 30 January 2020

Bail Pending Trial

N Chikono, for the applicants
M Mutamangira, for the respondent

MUSITHU J: On 18 November 2019, the applicant filed an application for bail pending trial as a self-actor. He faces one count of contravening section 126(1) (a) of the Criminal Law (Codification and Reform) Act¹ (the Act), that is robbery. The application was placed before me on 10 December 2019, having been previously postponed by my sister Judge NDEWERE J, and my brother judge DUBE BANDA J to allow the respondent to file its response. On 6 December 2019, the applicant filed a supplementary bail statement through his lawyers of record. The respondent had not filed a response to the supplementary bail statement when the application was placed before me. The applicant is jointly charged with two others Tawanda Mukwecheni and Kudakwashe Jongwe. The application was postponed by consent to 13 December 2019 for arguments. The respondent opposed bail.

In the course of his address to the court on 13 December 2019, *Mr Chikono* for the applicant informed the court that applicant's co-accused Kudakwashe Mukwecheni had been admitted to bail on the same allegations by MUZOFA J on 2 September 2019. I requested Mukwecheni's file from the registry and indeed confirmed that he was granted bail under case number B1354/19. *Ms Mutamangira* for the respondent submitted that the respondent's position on the application had not changed, notwithstanding the granting of bail to his co-accused. At the conclusion of the addresses by counsel, the court saw it necessary to invite the investigating officer to clarify certain aspects of the case and the circumstances under which the applicant and his accomplices were

¹ [Chapter 9:23]

arrested. The investigating officer availed himself on 21 January 2020, having been away on relief duties during the festive period.

The brief allegations against the applicant are as follows. On 14 August 2019, the applicant, Jongwe, Mukwecheni and two others approached the complainant Tendai Mangwende at her Epworth residence around 1600 hours. They were in a toyota vehicle with registration number ADK-0906. The applicant and Jongwe were in handcuffs, while the other three identified themselves as police officers from the Zimbabwe Republic Police (ZRP), Harare Central Police Station. They demanded to search the complainant's house for stolen television sets which the complainant had allegedly received from the applicant and Jongwe. The complainant denied them entry into her house, but Jongwe and the other two unknown assailants produced a pistol and forced their way into the house, dragging along the complainant in the process. They searched the house and took away US\$1500.00. They drove off with the complainant and dropped her at the corner store in Epworth.

The complainant made a police report which led to the arrest of Mukwecheni. Acting on a tip off, the police managed to arrest the applicant and Jongwe at Ruben Shops in Epworth where they were selling a television set. The complainant was called to the police station and she positively identified the two. The applicant denied the allegations against him. He argued that he was being falsely implicated and referred the court to paragraphs 7, 8 and 9 of the charge sheet. For convenience, I quote the paragraphs referred to hereunder:

- “7. **Accused one and two** others who are unknown to the complainant identified themselves as police officers from ZRP Harare Central. They then demanded to search for stolen television sets which the complainant had received from Kudakwashe Jongwe and Tanaka Tinashe Marimira.
8. The complainant denied them entry into the house but the accused person produced a pistol as a way of instilling fear to the complainant”
9. **Accused person one and two** other unknown then dragged the complainant into the house and started searching. During the searches the accused persons took cash amounting to US\$1 500.00. They then dragged the complainant to their motor vehicle and drove off with her”

Accused one and two referred to in paragraphs 7 and 9 are Mukwecheni and Jongwe. In the supplementary bail statement, the applicant averred that he was arrested with Jongwe at a bus stop in Chitungwiza while enroute to Epworth where they intended to sell a carpet they had in their possession. The applicant and Jongwe were known to the complainant as they had had prior dealings with her. They had sold her a television and hired Mukwecheni to transport the television

for them. When they were arrested in Chitungwiza, they were driven to Epworth by people whom they thought were police officers. They told the police that they had indeed sold a television to the complainant and hired Mukwecheni to transport it for them. They genuinely believed that they had been arrested by the police. The applicant and Jongwe did not see what happened in the complainant's house as they remained in the car handcuffed.

The respondent opposed bail on the basis that the applicant was facing a serious offence and had been positively identified by the complainant. Further, the trial date had since been set as the matter was ripe for trial. Granting bail when trial was imminent would incentivize the applicant to abscond in view of the seriousness of the charge. The matter was initially set to commence on 22 November 2019, but it was postponed to 5 December 2019, allegedly at the instance of the defence. *Ms Mutamangira* for the Respondent submitted that the matter was further postponed to 7 January 2020 and referred to the Regional Court for commencement of trial. The matter did not take off, and the applicants were further remanded to 6 February 2020. Meanwhile, the docket was referred back to the police for the further management of queries raised by the State. The charge was upgraded to armed robbery upon realizing that a firearm had been used in the commission of the offence. *Mr Chikono* for the applicant denied that the defence was responsible for the failure of the trial to kick off. He laid the blame on the State which was not ready for the commencement of the trial.

The investigating officer, Detective Constable Gideon Wakisai Muhonde told the court that on 14 August 2019, the complainant filed a police report alleging that some people who once sold her a television came to her house and robbed her of her money, while posing as police officers. Investigations led to the arrest of Mukwecheni, with Jongwe and the applicant being arrested two months later. Asked about his attitude to bail, the witness told the court that he had no objections to the admission of the applicant to bail.

The applicant is a vendor at Makoni Shopping Centre in Chitungwiza. He is married and has one child. He is of fixed abode and resides at a property owned by an uncle in Chitungwiza. In light of the investigating officer's attitude to bail and there being no likelihood of the applicant absconding, the court is satisfied that there is no reason to keep the applicant in custody. The respondent has not given a reasonable explanation as to why the trial is not taking off if the matter is ripe for trial. The docket has been referred back to the police for further examination. It is not

certain that the matter will definitely take off on 6 February 2020. *Ms Mutamangira* did not make further submissions in rebuttal following the conciliatory position taken by the investigating officer on the applicant.

In the premises, the application succeeds and the applicant is hereby admitted to bail on the following conditions:

- (a) He deposits the sum of RTGS\$ 300.00 with the Clerk of Court, Mbare Magistrates Court as bail recognisance.
- (b) He resides at Number 11782 Unit N Seke, Chitungwiza until the matter is finalized.
- (c) He should not interfere with police investigations or witnesses; and
- (d) He reports to Makoni Police Station once every week on Fridays between the hours of 6am and 6pm.

Ngarava Moyo & Chikono, applicant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners