

HOWARD DENGURE  
And  
EVANS NDOFA  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
MUZENDA J  
MUTARE, 18 February 2021

### **Bail Application**

### **IN CHAMBERS**

MUZENDA J: This is an application for bail pending trial. Both applicants are being charged with an offence of Robbery as defined in s 126 of the Criminal Law (Codification and Reform) Act, [*Chapter 9:23*] and the application is opposed by the state.

### **BACKGROUND FACTS**

The state's form 242's Annexure contains the following facts. On 28 January 2021, around 1300 hours the applicants hired complainant's motor vehicle from Sakubva Centre, Mutare to Dangamvura high density suburb. Complainant charged the applicants US\$ 15-00 for hire. Applicants paid the complainant. Complainant drove the applicants to Dangamvura and after Mukwenha Shopping Centre, first applicant instructed complainant to stop, complainant obliged. First applicant produced a firearm, pointed it at complainant ordering the latter to put his hands on the dash board of the vehicle. Complainant opened the driver's door and leapt out of the car leaving the car keys on the ignition. The first applicant jumped onto the driver's seat and drove off at high speed going towards Dangamvura Shopping Centre. Inside the motor vehicle were two cell phones, Net One Juice cards worth ZWL\$ 18 000-00, Buddie juice cards worth ZWL\$27 000-00, Telecel juice cards worth ZWL\$ 4 500-00 and cash amounting to RTGS \$38 000-00. The two applicants dumped the complainant's car at house number 63D Dangamvura Area 3 where police recovered it on 30 January 2021.

On 01 February 2021 the applicants were apprehended in Rusape where police recovered the firearm and some of the property and particulars belonging to the complainant.

### APPLICANT'S VERSION

Both applicants deny the charge of Robbery. They admit in their papers hiring complainant on the day in question and contend that the hiring fee was US\$ 30-00 which they paid though under protest. Upon their reaching the destination they demanded a refund of US\$ 15-00 from the complainant. An argument arose and complainant then screamed saying that both applicants were robbers.

Applicants' state that a crowd emerged armed with stones, empty beer bottles, iron rods and this prompted the two to flee using complainant's motor vehicle. Both deny owning a firearm and the firearm was planted by police on them. To the applicants the state case is not so strong against them.

### REASONS ADVANCED BY THE STATE IN OPPOSING BAIL APPLICATION

The state is opposed to the application on the following grounds:

- a) applicants are facing a very serious case which may, upon conviction, attract a very lengthy custodial sentence, the seriousness of the penalty may induce applicants to abscond if granted bail.
- b) applicants are likely to commit other crimes if released on bail.
- c) applicants reside in South Africa.
- d) The state case is fairly strong against both applicants in that the firearm allegedly used during the commission of the offence was recovered in the possession of the applicants. Some of the property belonging to the complainant was recovered from the applicants and others at their indications. Fingerprints of applicants were uplifted from the complainant's motor vehicle.

### ANALYSIS OF THE APPLICATION

Both the Constitution of Zimbabwe (No 20 of 2013) and the Criminal Procedure Evidence Act [*Chapter 9:07*] provide for the rights of arrested and detained persons and power to admit to bail. Such rights are unequivocally fundamental and where there are no compelling reasons advanced by the state, an accused person should be granted bail. Most facts appear to be uncontroverted in this application. Both applicants hired complainant from Sakubva to Dangamvura for a charge. Both applicants drove away complainant's car leaving him behind.

They drove away the car which contained complainant's property. Both applicants dumped the car and were apprehended by the detectives in Rusape and found with some of complainant's property. First applicant led police to the recovery of the juice cards in Masvingo.

What needs to be decided by this court is whether the state had managed to advance compelling reasons to justify the continued detention of both applicants pending their trial. The offence of Robbery is undoubtedly very serious and upon conviction an offender faces a lengthy prison term. According to the state police detectives in Rusape got a tip off to the effect that applicants were about to commit another criminal offence of Robbery in Rusape. Unfortunately both applicants did not address the circumstances of the events leading to their arrest. The court will accept the state's version in the circumstances and conclude that the tip off led to applicant's arrest hence the probabilities of applicants likelihood to commit criminal offences if released on bail has been established by the state. The state also alleged in its papers that both applicants periodically jump the border into South Africa. The applicants only emphasized in their papers that they do not hold passports but did not refute the allegations of illegally crossing the border. Again the allegations by the state were left unattended. The applicants contend in their application that they fled from the scene out of fear of the approaching mob, however both fail to explain why they did not seek police protection and possibly resort to have driven the complainant's car to the police station. The applicants also failed to explain why they were found in possession of complainant's property in Rusape. This obviously had nothing to do with their safety.

I am convinced that the state case against both applicants is strong and if the applicants are granted bail they are likely to abscond. The state had managed to place before this court compelling reasons that would justify the continued incarceration of both applicants. In any case the state indicates that investigations are almost complete.

As a result the following order is returned.

The application for bail is dismissed.