

CHIRAIRO CHIZA

VERSUS

THE STATE

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 3 JULY 2012 AND 12 JULY 2012

Mr R. Ndlovu for applicant
Mr W. Mabhaudi for respondent

Bail Application

CHEDA J: This is an application for bail.

Applicant according to respondent's outline of the state case is 36 years of age and unemployed while the complainant is Botswana Power Co-operation represented by Daniel Moeletsi Thako a Senior Technical Officer.

He is facing three counts. In the first count it is alleged that on the 10th May 2012 at 0100 hours applicant in concert with Shanganai Ndlovu and Sonboy Nkululeko who are still at large approached two security guards at complainant's premises, forced open the locked guardroom door where the guards had locked themselves inside and entered.

Upon entry the applicant and his colleagues who were armed with an assortment of weapons assaulted the security guards. They searched them and stole a cellphone from one of them Ompile Chaboneka, also a security guard. They tied the guards' hands and legs and while one of them stood guard. Others proceeded to break open the door, stole keys of the main gate. They entered and stole an Isuzu RTF800 truck.

On the second count he is facing an allegation of assaulting a police officer. It is alleged that at 1230 hours he assaulted a police officer who was effecting an arrest after he had been caught at a road block.

The third count relates to driving without a valid driver's licence. Applicant's representative has argued that applicant is a good candidate for bail and that all other fears expressed by respondent can be cured by the imposition of stringent bail conditions.

This application was filed on the 24th May 2012 and on the 12th June 2012, respondent filed a notice of opposition.

Its argument was that:

- (1) applicant's accomplices were still at large;
- (2) investigations are still under way, and
- (3) that applicant had committed a serious offence.

Applicant has persisted with his argument. However, respondent has made a somersault by completely abandoning its stance as of the 12th June 2012. While the state has indeed every right to shift its position, the shift should be on the basis of a solid legal ground. *Mr Mabhaudi* for respondent has confirmed that the applicant's two other accomplices have not yet been apprehended, but, however, he is of the view that despite this position, applicant should be granted bail on condition that he reports twice a week, as his continual incarceration will result in his prejudice. It is also his argument that upon his arrest applicant was found in possession of an agreement of sale of the said motor vehicle, wherein, he is stated as the buyer while his two accomplices are listed as sellers. It is on that basis, he is of the view that he should be released on bail.

It is now trite law that the granting of bail is every citizen's constitutional right. Applicant should only be deprived of that right upon the existence of good recognised legal grounds. This stance is on the basis of the hallowed principle of the presumption of innocence until proven guilty by a competent court.

In *casu* applicant not only did he commit a serious offence outside our borders but

- (1) his accomplices are still at large, and
- (2) he was found in possession of an agreement of sale where he is stated as the buyer of the said motor vehicle and the alleged sellers are still at large.

I fail to understand respondent's reasoning in conceding to applicant's release on bail under these circumstances. The two accomplices who are the supposed sellers are still at large.

I also find it difficult to understand how the respondent can believe applicant's story when it has now been established that the said vehicle which he is supposed to have bought is a stolen vehicle. To compound the problem, the supposed sellers absconded and are still at large. I am alive to the fact that respondent's view with regards to such matters are paramount but the court is still empowered to make a final decision see *Kamba v State* HB 93/09. In addition to applicant's circumstances, a suspect who when placed under arrest not only resists arrest but has the audacity of fighting a police officer exhibits a brazen disdain for the rule of law. Such a person should not be released on bail as he has no respect for lawful agents, see, *Mapiye and others v S* HB 44/12.

For the above reasons I do not agree with both applicant and respondent that bail should be granted under these circumstances. It should be noted that the admission to bail in as much as is legal entitlement to a suspect, that entitlement is not absolute but subjective in that it should be accorded to a suspect whose involvement has all the hallmarks of a punishable criminal activity, who if released is not likely to stand trial.

I conclude therefore that applicant should not be granted bail as he is unlikely to stand trial.

The application is dismissed.

R. Ndlovu and company, applicant's legal practitioners
Criminal Division, Attorney General's Office, respondent's legal practitioners