

**MARTIN TENDAI SHONE**

**VERSUS**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
MOYO J  
BULAWAYO 24 OCTOBER AND 7 NOVEMBER 2013

*Ms P. Mvundla* for the Applicant  
*Mr T. Hove* for the Respondent

**JUDGMENT**

**Moyo J:** This is an application for bail pending trial. The applicant is charged with the offence of Armed Robbery as defined in section 126 of the Criminal Law Codification and Reform Act chapter 9:23. The allegations against the applicant are that on the 28<sup>th</sup> of June 2013, at around 13.40 hrs, the applicant together with 7 others raided house number 86 circular Drive Burnside. They allegedly threatened the domestic workers with pistols, before ransacking the house and stealing a cabinet safe containing \$400 and some jewellery.

The state is opposed to bail on the grounds that there is a likelihood that Applicant is likely to abscond and that applicant is implicated by his co-accused. The state also alleges that the safe that was stolen during the purported robbery was recovered from the Applicant's business premises linking Applicant to the alleged offence. Applicant's counsel stated in her submissions that they will deal with that issue at the appropriate time in their defence as an explanation is available for that. Applicant has also advanced ill health as one of the grounds for his suitability to bail.

The presumption of innocence at this stage operates in favour of the Applicant but Applicant's suitability to bail should be weighed with many other factors with a view to balancing the interests of justice. In *State v Jongwe* SC 62-02 the learned Chief Justice *Chidyausiku* CJ, indicated that when assessing the risk of an Applicant for bail absconding before trial, the court will be guided by inter alia, the character of the charges and the penalties which in all probability would be imposed if convicted, the strength of the state case and the Accused's ability to flee to a foreign country. The main object of granting bail to a suspect is to accord him his constitutional right to freedom pending trial.

While so doing the Court will always guard against the danger of allowing freedom where there's a possibility that the ends of justice will be defeated. In determining whether or not applicant is likely to abscond, the Criminal Procedure & Evidence Act chapter 9.07 provides the Court with the following guidelines in section 117.

- i) The nature and gravity of the offence.
- ii) The strength of the prosecution case.

Armed robbery is a serious offence and the term of imprisonment is likely to be long. In the case of *AG v Mapanga Nhachi* 2009 (2) ZLR 150 (SC), *Sandura JA* as he then was held that bail proceedings are different from a criminal trial as the court has a wide range of information including hearsay evidence, as the basis upon which to determine whether or not to grant bail. The parts of the safe that was stolen during the armed robbery in question was recovered at the applicant's business premises, the applicant's counsel simply submitted that there is an explanation for that which they will provide to the trial court. Applicant was implicated by his co-accused resulting in the recovery of the parts of the safe from his business premises. Applicant has thus proffered no defence whatsoever to these issues linking him directly to the alleged offence. On the other hand the state tendered evidence, linking the applicant directly to the commission of the offence. I conclude that applicant is not a suitable candidate for bail as his illhealth can not be the sole reason to grant him bail. There is a real likelihood considering the seriousness of the charges and the penalties involved that applicant will abscond.

I accordingly dismiss the application for bail pending trial for the aforestated reasons.

*D.W. Mhiribidi & Company*, Applicant's Legal Practitioners  
*Criminal Division, Attorney General's Office*, Respondent's Legal Practitioners