

THE STATE

APPLICANT

Versus

NKULULEKO MOYO

1ST RESPONDENT

And

CUSHION TSHUMA

2ND RESPONDENT

And

STANLEY NDLOVU

3RD RESPONDENT

And

NDABEZINHLE NENE

4TH RESPONDENT

And

THEMBA CHIMISO N.O.

5TH RESPONDENT

IN THE HIGH COURT OF ZIMBABWE
CHEDA AJ
BULAWAYO4 & 14 FEBRUARY 2013

Ms A. Munyeriwa for applicant
N. T. Mashayamombe for respondents

Appeal against granting of bail pending trial

CHEDA AJ: This is an appeal by the Attorney General against the decision of the 5th respondent who granted bail pending trial to the 4 accused persons.

The four accused persons appeared before a magistrate for remand. They are facing two counts of stock theft. They applied for bail pending trial. The magistrate granted them bail of \$150,00 each and imposed reporting conditions and an order that they continue to reside at a given address and surrender travel documents. This was despite opposition to their being granted bail by the Attorney General.

The Attorney General has now appealed against that grant of bail. The full record has not been typed, but the facts presented to the court are that a motor vehicle was observed loading some meat at an address in one of the city townships. A check at that address revealed some unskinned meat of more than 120 kilogrammes. Information received linked the meat with

accused persons. This led to their arrest.

In the second case the accused persons are reported to have stolen a white bull and a white cow from a farm in the Umguza area. They drove the beasts for about 500 metres out of the fence then slaughtered them. They hired a taxi from one named witness of 16896 Cowdray Park, Bulawayo and the meat was ferried to house number 7367 Nkulumane, Bulawayo owned by one Betty Mpofu where 200 kg of meat was recovered. The owner of the house implicated the accused persons.

At the remand court the state also alleged that 1st and 2nd respondents have an outstanding case at Matopo Police who are still looking for them. They are wanted persons in that area. 1st respondent has a previous conviction for a similar offence in 2003.

On their behalf it was submitted that the cases referred to are mere allegations by the police and have not yet been proved against them.

The magistrate held that since they have not yet been convicted the presumption of innocence weighs in their favour.

While that is the general principle, such cannot be used to override a very strong suspicion created by the facts presented to the court. The balancing of their right to freedom has to be taken together with the facts on which the state relies on for placing them in remand.

Where the state has facts that create a real possibility that they might be guilty of the alleged offence, and the offence is a serious one that attracts a possible long term of imprisonment if a conviction is secured, it would be a misdirection to ignore such facts.

In this case, the alleged crimes are serious. They attract heavy sentences. The state has shown that there is a very strong suspicion against them should the alleged evidence be substantiated.

The facts suggest that they committed these crimes while they are wanted elsewhere for committing similar offences. This means they are very likely to commit more similar offences before they are tried for the current ones.

In my view the magistrate should not have granted them bail in the circumstances. The order by the magistrate, granting the respondents bail in case number CRB W/C 1422-24/12 is set aside and substituted with the order that the respondents shall be remanded in custody pending trial.

*Criminal Division, Attorney-General's Office, applicant's legal practitioners
Mashayamombe & Co. respondents' legal practitioners*