

GREATNESS TAPFUMA
versus
THE STATE

HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 16 OCTOBER AND 22 OCTOBER 2015

Bail Pending Appeal

B. Masamvu for applicant
T. Hove for respondent

MAKONESE J: The applicant is a male adult residing at Cowdray Park, Bulawayo and is a Pastor at Kingdom Rulers International Ministry. On 22 September 2015 applicant was convicted and sentenced to 30 years imprisonment on two counts of rape, with 5 years suspended on the usual conditions of good behavior. The applicant has noted an appeal to this court against both conviction and sentence. The applicant seeks to be released on bail pending appeal arguing that his appeal has prospects of success and that there is no danger of him absconding. The state is opposed to the granting of bail, insisting that there are no prospects of success and that if granted bail the applicant would be tempted to flee and endanger the administration of justice.

Brief facts

The facts surrounding this matter are that on a date unknown to the prosecutor, but sometime during the period extending from 1 October 2014 to 30 October 2014 accused person who was an apostle at the complainant's church, invited the complainant at his residence where he proposed love to her but was turned down. During the same month complainant went to the accused's place of residence, where the applicant informed the complainant that he needed to exorcise some evil spirits which could cause the death of her (complainant's) father. It is then,

that applicant instilled fear in the complainant advising her that if she did not agree to his love proposals, her father could be killed by evil spirits. The state alleged that the applicant removed complainant's clothes and had sexual intercourse with her without her consent. On the second count, between 1 November 2014 and 30 November 2014, the applicant invited complainant to his place of residence. He had sexual intercourse with her several times without her consent. The offence came to light when complainant observed blisters on her private parts. She then told her mother about the sexual intercourse she had had with the applicant. At the time of the offence the complainant was a female juvenile aged 16 years. The applicant was 33 years old. The applicant vehemently denied the allegations. He told the court that he never had sexual intercourse with the complainant. He stated that the report of rape was only made after complainant had left his church to join another Cowdray Park based church known as Transfiguration Zone, led by one Ronald Melchizedek. The applicant stated that Ronald was once his friend. Ronald had requested applicant to be his spiritual father before he formed his church. The applicant had turned him down. There appears to have been rivalry between Ronald's church and applicant's church. Applicant states that he never made any threats to the complainant and that the words attributed to him were in fact words spoken by a demon when it manifested through the complainant.

The applicant contends that the conviction is unsafe due to the various inconsistencies in the evidence of the state witnesses. He also argues that his defence to the allegations was not controverted and proved to be false.

Our law in applications of this nature is fairly settled. The main considerations are:

- (a) The prospects of success on appeal.
- (b) The likelihood of absconding if bail is granted.

See *S v Williams* 1980 ZLR 466.

I will address each of these factors *in seriatim*.

(1) Prospects of success

The state avers that there are absolutely no prospects of success. The state concedes that there are some inconsistencies between the statements given by complainant at the police station and the evidence given under oath and in court. It is important to note here that the allegations against the applicant occurred sometime in October and November 2014. The report was only made in February 2015. It is common cause that the report was made after the complainant had deserted applicant's church to join the one led by Ronald also known as Prophet Melchizedek. It is my view that the inconsistencies pointed out by counsel for the applicant are material to the conviction. It is improper to simply dismiss these inconsistencies in view of the seriousness of the charges faced by applicant.

It is noteworthy that in dismissing the applicant's defence, the learned magistrate in the court *a quo* states at page 19 of the record as follows:

“Lastly, the court does not find any sign of Ronald's hand in the accused's prosecution. I do not find that the two churches of Ronald and accused are rivals to the extent of needing the elimination of the other. They are virtually unknown little outfits called Kingdom Rulers Ministry and Transfiguration Zone – quite inventive names. If such can maintain a rivalry that leads to falsely implicate each other, then we should fear that bigger religious organisations' rivalry might trigger nuclear war soon.....”

It is my view that the nature of the rivalry between the churches once established, the size of the religious organization is not what matters. The court should have established that the applicant's defence was false and improbable. It is my view that the manner in which the report of rape was made and the circumstances surrounding the whole matter, leaves a lot to be desired. The court *a quo*, should have warned itself and guarded itself against the possibility of false incrimination.

Our criminal law is guided by the need for proof beyond reasonable doubt. In the case of *S v Makanyange* 1996 (2) ZLR 231 the court laid down this principle in the following terms:

“Proof beyond a reasonable doubt demands more than that a complainant should be believed and that the accused is disbelieved. It demands that a defence succeed wherever it appears reasonably possible that it might be true....”

On the facts of this matter the appeal against conviction carries some prospects of success. The applicant's appeal must be argued and in the event of an acquittal, the applicant would have been prejudiced.

(2) Risk of absconding

The applicant has stated that he is a 33 year old man with strong family ties in Zimbabwe. He is a full time pastor with his own church and followers. No evidence has been advanced to show that applicant may abscond if granted bail. The state's view is that applicant has tested prison and that coupled with the lengthy term of imprisonment may tempt him to abscond and evade justice. I am not persuaded that it has been demonstrated that the applicant will abscond if granted bail pending appeal. It is trite that bail is always at the discretion of the court. In the exercise of that discretion I am satisfied that the appeal does carry some prospects of success and that that the administration of justice will not be endangered if applicant were granted bail pending his appeal.

In the circumstances, the applicant is granted bail pending appeal on the following conditions:

- (1) Applicant deposits cash bail in the sum of \$500-00 with the Registrar of the High Court.
- (2) Applicant resides at House number 6639 Cowdray Park, Bulawayo pending the outcome of his appeal.

Dube-Tachiona & Tsvangirai, applicant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners