

LOVEMORE MADZIYAYO
versus
THE STATE

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE 18 June 2010 and 8 July 2010

Mr. *Kwenda*, for the applicant.
Mr. *Nyazamba*, for the respondent.

BAIL APPLICATION

BHUNU J: The applicant is in remand prison on allegations of armed robbery as defined in section 126 of the Criminal Law (Codification and Reform Act) [*Cap 9:23*]. The applicant acting in consort and common purpose with 4 others is alleged to have robbed ZB Bank at gun point on 18 March 2010. He is alleged to have supplied the firearm that was used in the robbery. The gang using force and violence then stole USD114 724-00, ZAR14 332-00, one pistol and six cell phones

Subsequent to the armed robbery the applicant's gang had a shootout with the police in which a police officer was shot and killed. He was previously denied bail by this Court. He now applies for bail on the basis of changed circumstances.

The changed circumstances he relies on are that he has now tendered additional security in the form of surrender of title deeds and travel documents. He also claims that the state case has been weakened by the death of one of his alleged accomplices John Taranayi.

Undoubtedly this is a very serious offence. The mere fact that the applicant has now tendered additional security and surrender of travel documents does not in my view convert into sufficient guarantee that the applicant will not abscond. The applicant's circumstances are worsened by the fact that a police officer was shot and killed by the applicant's gang in the course of investigations. That alone is ample proof that releasing

the applicant on bail might jeopardize the ends of justice. That also is additional proof that releasing the applicant on bail might jeopardize investigations. It is not for him to tell us that investigations are now complete.

It has been further submitted that our borders are porous and that the applicant has contacts in Mozambique to which he might flee. I accept that those facts militate against granting the applicant bail as he is a flight risk considering the gravity of his offence.

The mere fact that the applicant's co accused is now dead does not necessarily mean that the state no longer has evidence against him. The facts alleged by the state point to other independent evidence tending to implicate the applicant. For instance it is alleged that he had possession of the firearm used in the robbery. He led to the recovery of that weapon. He has since been convicted of possession of an unlicensed firearm. That evidence if proved tends to strengthen rather than weaken the state case.

. The offence was allegedly committed barely 3 months ago. Having regard to the seriousness complexity and dangers involved in investigating this matter the applicant cannot hardly be heard to complain that there has been an unreasonable delay in bringing him to trial. In the result I come to the conclusion that there has been no change for the better warranting the granting of bail to the applicant.

It is accordingly ordered that the applicant's application for bail pending trial be and is hereby dismissed.

*Musunga and Associates, the Applicant's Legal Practitioners.
The Attorney General's Office, the Respondent's Legal Practitioners.*