

KAMUDYARIWA TIRIVANGANI  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
CHIWESHE JP  
HARARE, 22, 28 September 2010 and 13 October 2010

Applicant in person  
*S. Fero*, for the respondent

CHIWESHE JP: The applicant is charged with armed robbery on five counts. He is currently on trial at the Magistrates Court, Harare.

The applicant is a member of the Zimbabwe Republic Police. He is aged 28 and resides at 1207 Muzikanwi Street, Dzivarasekwa, Harare. His co-accused, Samson Chigwende, is a member of the Police Special Constabulary in Dzivarasekwa, Harare. He is also aged 28. He resides at 7802 Tynwald South and works for ZESA.

It is alleged that some time in December 2009 the applicant, his co-accused, Eddie Chirwa and Richard Zimba connived and hatched a plan to commit a spate of armed robberies around Harare targeting elderly people. The plan was that the applicant and his co-accused Samson Chigwende would supply Eddie Chirwa and Richard Zimba with two sets of army uniforms and an air gun with which the two would use to commit armed robberies in and around Harare. The applicant and his co-accused would in turn receive part of the loot from the robberies so committed.

During the months of December 2009 and January 2010, Eddie Chirwa and Richard Zimba, dressed in army uniform and armed with the air gun so supplied by the applicant and his co-accused, went on to commit armed robberies against the persons and properties of five elderly complainants . The complainants are as follows:

- (i) Turville Kille, aged 77, residing at 53 Gallant Drive, Mount Pleasant, Harare.
- (ii) Peggy Tandaol, aged 82, residing at 40 Northwood Rise, Mount Pleasant, Harare
- (iii) Dawson Gilbert Neville, aged 83, residing at 42 Couril Drive, Mount Pleasant, Harare.
- (iv) George William Frederick Ellway, aged 82, residing at 17 Morgate Road, Mount Pleasant, Harare, and
- (v) Patrick Ronald Chisholm, aged 52, residing at 73 Lavenham, Bluffhill, Harare.

After the commission of these robberies, Chirwa and Zimba gave the applicant and his co-accused an undisclosed sum of money and a 1209 Nokia cell phone.

On 30 January 2010 police, acting on information, arrested the pair of Chirwa and Zimba. The army uniform, the air gun and various property belonging to the complainants were recovered as a result Chirwa and Zimba implicated the applicant and his co-accused. The applicant and his co-accused were arrested on the same day 30 January 2010. On being searched the applicant was found in possession of the 1209 Nokia cellphone which was positively identified as belonging to D.G. Neville of 42 Couril Drive, Mount Pleasant, Harare.

The applicant seeks bail pending trial. He is employed by the Zimbabwe Republic Police and is resident at 1207 Muzikanwi Street, Dzivarasekwa, Harare. He is married and supports his family and members of his extended family. He does not hold a passport and if granted bail he would be able to report at his nearest police station at least once a week. In addition the applicant has a legitimate complaint – that is, it has taken too long for the State to bring him to trial. He has awaited trial since his arrest on 30 January 2010. Ms *Fero* for the respondent and the trial prosecutor have advised that trial has since commenced. The applicant has attempted to convince the court that these two officers of the court are deliberately misleading the court as to the progress made vis vis trial procedures. He maintains that no trial is in sight. In a sworn statement made available to the court, the trial prosecutor, Mr Norman Tsarwe, states that on 17 September 2010 the applicant and his co-accused cross examined the first State witness. It was not possible to call the second State witness as time had run out. The first and second witnesses are both convicts serving prison terms (presumably these would be Chirwa and Zimba). They have to be conveyed to and from court by Prisons. Sometimes Prisons would inadvertently leave them behind when conveying other prisoners to court. On other occasions prisons would not do the court run as they had no fuel. On this particular day, 17 September 2010, it was CID Homicide who had to bring these witnesses to court. Mr Tsarwe further states that trial has been adjourned to 1 October 2010. It is intended to call on that day the second convicted witness and thereafter three more state witnesses.

In addition Ms *Fero* has advised the court that she had physically visited the magistrate's court to enquire from officers thereat as to what progress had been made vis a vis trial. I have no reason to doubt her integrity in that regard. On the contrary, the applicant's assertions that the State was doing everything to block commencement of trial and the further suggestion that State counsel is deliberately misleading the court, should be dismissed for want of substantiation. It is, however, correct to observe that the applicant awaited trial for a period of at least eight months, an inordinate delay for a case of this nature. Nonetheless it is also a fact that trial has since commenced.

In a bail application it is now established that the following factors, among others, should be taken into account, namely;

- i) whether the applicant is likely to abscond and thereby not stand trial
- ii) whether the applicant is likely to interfere with witnesses or investigations if granted bail, and
- iii) whether the applicant is likely to commit further offences while on bail.

The State is opposed to this application primarily because it is feared the applicant may abscond and thus not stand trial, to the prejudice of the due administration of justice. The probabilities of abscondment in my view are very high in the present case. The applicant is facing a very serious charge and if convicted will be sentenced to a long term of imprisonment. That in itself is likely to induce abscondment on his part. Further, the evidence against him is strong. In addition to the evidence of his alleged accomplices, he has to explain how he came to be in possession of the Nokia cellphone (identified by serial number) belonging to one of the victims of the spate of armed robberies in which it is alleged he took part, directly or indirectly. The prospects therefore of conviction on one or more of the five charges preferred against him are good. I therefore share the views of the State that the applicant, faced with such prospects and such consequences, is likely to abscond.

It was for these reasons that I dismissed the application for admission to bail.

*Attorney General's Office, respondent's legal practitioners*