

MOSES WARNING CHADEMANA MAPANGA NHACHI
versus
THE STATE

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 11 January 2010

Mr Samukange, for the applicant.
Mr Nyazamba, for the respondent

Bail Application

BHUNU J: This is an application for bail on the basis of changed circumstances. The applicant is standing trial in the Regional Magistrates Court on one count of armed robbery and one count of illegal possession of a firearm in contravention of s 4(1) as read with s 4 (2) (b) of the Firearms Act [*Cap 10:09*].

In the first count the applicant and his four accomplices are alleged to have robbed two police officers manning the Mbare police station gate of their service FN rifle at gun point. The two police officers resisted but they were however overpowered and relieved of their rifle after shots were fired and one of the officers had been grazed on the forehead by a bullet.

In the second count it is alleged that the applicant was found in illegal possession of a firearm upon his arrest. The state has so far led evidence from 8 witnesses. The trial magistrate unfortunately died before completing the trial.

The applicant having been granted bail by the High Court had that decision reversed by the Supreme Court under case number SC 40/09 on the grounds that the evidence suggested that:

1. Acting on information the police had raided and arrested the applicant at a city hotel. Upon searching the room he occupied with his wife they recovered an unlicensed pistol from a bag containing his personal documents.
2. The pistol was subjected to forensic ballistic tests which established that the spent cartridges recovered from the robbery scene had been fired from the pistol in question.

3. The accused lives in South Africa but resides at 2A Tarlington Close Avondale whenever he visits Zimbabwe.
4. It was a notorious fact that people from this country can easily jump the border into other countries without any passport.

On the basis of such observation the Supreme Court concluded that there was a high risk of abscondment and consequently denied the applicant bail

He now seeks to be admitted to bail on the basis that there changed circumstances which now entitle him to bail. It was submitted on his behalf that the changed circumstances are as follows:

1. That the evidence led so far from the 8 state witnesses is so weak as to entitle the applicant to bail. It was stated that the recovered pistol was wrongly described in the police diary exhibit 10 giving the impression that the recovered weapon was planted by the police in his bag
2. That previously the applicant had not offered title deeds as security but was now offering his uncle's title deeds as security.
3. He has now submitted affidavits from his wife and uncle showing that he has strong connections in this country although he is still working in South Africa where he has established a home and has a house in that country. In proof whereof he has submitted his passport showing that he pays frequent visits to this country.

A cursory perusal of the record of proceedings at the applicant's trial shows that the two complainants in the robbery charge gave incontrovertible evidence. Their evidence was to the effect that indeed the robbery took place and shots were fired in the course of the robbery. They were however, unable to positively identify their assailants.

Despite the complaints' failure to identify their assailants the state led evidence from various state witnesses to the effect that spent cartridges were recovered from the scene of the robbery. Acting on information the accused was arrested at a city hotel. The room in which he was booked together with his wife was searched and a pistol recovered from his bag. Both the applicant and his wife signed to acknowledge the recovery of the pistol from his bag.

The state claims it has forensic evidence linking the recovered spent cartridges to the pistol recovered from the applicant's bag. The trial magistrate however passed away before he could hear that evidence.

Having regard to the above rudimentary summation of the facts, it cannot be said by any stretch of the imagination that the state case has weakened in any way from the time the

applicant was denied bail by the Supreme Court. If anything the state has proffered evidence which tends to strongly link the applicant to the commission of both crimes.

I have given a very truncated summation of the facts because I do not wish to be seen to be predetermining the case, for to do so will be to usurp the functions of the trial court. It is the trial court which is best suited to determine this case after hearing and weighing all the evidence before it.

The trial magistrate's death was a sad unfortunate development but no one should be allowed to take advantage of that occurrence to circumvent the ends of justice. Justice must be pursued to its logical conclusion despite the trial magistrate's demise.

For the foregoing reasons I am satisfied that there are no changed circumstances warranting the granting of bail to the applicant. **It is accordingly ordered that the application for bail be and is hereby dismissed.**

Venturas and Samukange, applicant's legal practitioners
The Attorney General's Office, respondent's legal practitioners