

THE ATTORNEY GENERAL  
versus  
SHINGIRAI MAPURAZI

HIGH COURT OF ZIMBABWE  
MWAYERA J  
HARARE, 3 October 2011

*C Chimbari*, for the applicant  
*Mr Macharagu*, for the respondent

MWAYERA J: This is an appeal against the granting of bail to the respondent by the magistrates court. The respondent is opposed to the application citing that the respondent is a suitable candidate for bail. A perusal of the record of proceedings in the court *a quo* shows a brief statement by the magistrate that remanding the accused now the respondent in custody will not achieve anything in the interest of justice. His reasoning for coming to that conclusion was not outlined.

However from submissions made in the court *a quo* and before this court the reasoning for the State opposing bail pending trial are clearly spelt out on one hand and reasons for the respondent desiring to be treated as a suitable candidate for bail are well spelt out. It is common cause that the respondent was convicted and sentenced for fraud in the past. He is on bail pending appeal for that fraud charge. It is also not in dispute that he has pending cases of a similar nature. The respondent is a man of fixed abode and a Zimbabwean. There is no evidence given that he is a flight risk, even though warrants of arrest are said to have been issued. Whilst on this point it is important to highlight the stage at which a warrant of arrest is issued. A warrant of arrest comes to be issued after an application has been made as regards the non-availability of a party to proceedings when the party was fully aware of the court date either by way of having been remanded or summoned or subpoenaed. The warrant of arrest is issued by the magistrate in court after the application has been made and the magistrate is satisfied that the person is in default. I agree with the State counsel submission that the filing in of warrant of arrest form in this case annexure 'D' is a purely administrative process to assist the police effect arrest on the person. It is an occurrence which happens after the warrant has been issued in court. The fact that annexure 'D' has not been signed by the magistrate does not mean that there is no warrant which was issued on 18 January 2010. The

question is simply does the fact that the applicant defaulted out on 18 January 2010, on its own mean he is a flight risk. There is no evidence of the default enquiry further that the factor on its own cannot be sufficient ground to show likelihood to abscond moreso when one considers that the respondent had other records on which he was appearing and one on which further remand was declined. The warrant remained outstanding and that no default enquiry was made even when he appeared on remand for other matters is not the accused's fault but purely administrative. The State could have brought it to the attention of the court and the warrant dealt with as opposed to simply seek to have it remain outstanding and use it as only ground for opposing bail.

Fraud is a serious offence which the legislature in its wisdom talks of option of a fine with an alternative prison term of up to 35 years. The fact that there is an option of a fine means there is no incentive to abscond, also the respondent is on bail pending appeal which is bail which is granted upon consideration of the fact that there are prospects of success on appeal. This further reduces the likelihood of abscondment on the part of the respondent. It is apparent that upon weighing the liberty of the respondent on one hand and the interest of administration of justice on the other it is clear there is no danger that the appellant will not avail himself for trial and it is in the interest of justice that he be admitted to bail.

I find no fault in the bail conditions granted by the magistrates' court and as such the appeal is dismissed. Bail as granted by the magistrate upheld.

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