

MICHAEL MUSIGA
versus
THE STATE

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 19 December 2013

Bail application

T. Takaendesa, for the applicant
D.H.Chesa, for the state

MATHONSI J: The applicant is a 26 year old who is unemployed and hails from Chitungwiza where 3 cases of robbery occurred on 30 September 2013 and 1 October 2013. The last 2 were committed using a motor vehicle which had been stolen in the first count.

The applicant and his co-accused, one Brian Mapanga, are being charged with those 3 counts of robbery. He has now approached this court protesting his innocence in respect of all the charges and seeking his admission to bail pending trial. The applicant states that he has no incentive to abscond because he does not possess any travel documents and has never violated any immigration laws. As a married man of fixed abode he harbours no intention to abandon his family which looks up to him for shelter. As he does not know any of the state witnesses, there is no chance of him interfering with them. There being no evidence of a propensity to commit crime it cannot be said that he will commit further offences and he denies that the state case against him is strong.

The state is opposed to bail on the grounds that the applicant is strongly linked to the offences. Upon his arrest, he is the one who led the police to his co-accused Brian Mapanga from whom property belonging to the complainant's in counts 1 and 2 were recovered. As the state case against the applicant is very strong, there is a high risk of abscondment.

A bail application involves a balancing act between the liberty of an individual who has not been found guilty and the interests of justice, that is, to ensure that a bail applicant will stand trial; *S v Dzawo* 1998 (2) ZLR 536.

In casu, the applicant has attached to his application the request for remand Form 242 where it is stated in respect of the 3rd count of robbery which he is facing, that:

“One of the accused persons kicked the complainant on her chest and she fell down. The accused persons then searched the complainant all over her body and stole her hand bag that contained her national I.D and US\$2,00. The complainant screamed for help resulting in the arrest of Michael Musinga and the subsequent recovery of the hand bag.”

It is curious that the applicant has not bothered to challenge those allegations, which if they are true suggest that he was arrested immediately after committing the offence and property recovered from him. More property was recovered from his co-accused who was arrested because of him. If that is the case, then surely the prosecution case against him is very strong. Mr *Takaendesa*, explained from the bar that the applicant was caught in cross fire when a chase for the culprit was being made and that although he led the police to recover stolen items this was as a result of torture. Nothing more has to be said about that.

The applicant faces serious charges where the prosecution case is very strong. This therefore raises the risk of abscondement, from which this application turns. It was stated in *S v Jongwe* 2002 (2) ZLR 209 (S) 215 B-C that:

“----in judging the risk that an accused person would abscond the court should be guided by the following factors:
(i)The nature of the charge and the severity of the punishment likely to be imposed;
(ii)The apparent strength or weaknesses of the state case;
(iii)The accused’s ability to reach another country and the absence of extradition facilities from the other countries;
(iv)The accused’s previous behaviour;
(v)The credibility of the accused’s own assurance of his intention and motivation to remain and stand trial.”

I have already stated that the applicant faces very serious charges and if convicted, he is likely to be imprisoned for a long time. The state case is strong and although he says that he possesses no travel document, this cannot prevent him from placing himself out of reach. I am not persuaded by assurances that he will not abscond.

The allegations against the applicant suggest that he may be a serial robber. It would be the height of irresponsibility to release him to society.

I conclude therefore that the applicant is not a good candidate for bail.

The application is accordingly dismissed.