

TATENDAMAREMBO  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
TAGUJ  
HARARE, 6 February 2015 and 11 February 2015

**Application for Bail Pending Trial**

*G M Majero*, for the applicant  
*D H Chesa*, for the respondent

TAGUJ: This is an application for bail pending trial. The applicant is facing 9 counts of Robbery as defined in s 126 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23.*]

The application is strongly opposed by the respondent.

The circumstances as given in the state papers were that the applicant, and in the company of Ignatius Mudzingwa, Kelvin Kudzayi Chiwana, Shyleen Nyamweda, Franklin and Mutirikwa robbed nine complainants between 12 September 2014 and 15 January 2015 at various places in the city of Harare. This was a group of robbers that were travelling in different cars robbing people. On the 16 January 2015 detectives received information about the whereabouts of the accused persons who were responsible for the robberies. Acting on that information the detectives located the applicant and his accomplices at St Marys, Chitungwiza. Noticing that they had been cornered, the applicant and his accomplices sped off in their get-away car. The Police fired shots resulting in Ignatius Mudzingwa, Kelvin Kudzayi Chawana and Shyleen Nyamweda being shot dead. The applicant was shot on the back and survived. Franklin and Mutirikwa escaped.

Upon the applicant's arrest various property, namely, One Goodman DVD/CD Player, Generic Mini Projector and charger, Nintendo Wii Controller S/N LEH 111008100, Two Disc Lights, Remote Control, Joystic Controller and Power Pack for the projector, Six Wii Video

Discs, Five Connecting Disco Lights, AV Cables, Various ladies new cloths, Blackberry Curve IMEI Number 357256042193802, Econet Cell phone IMEI Number 360253025619754 and a Samsung GT 1080 cell phone IMEI Number 358037035535822 were recovered.

The respondent and the investigating officer who swore to an affidavit opposed to the applicant being granted bail on the basis that the offences applicant is facing are serious such that upon conviction a long custodial sentence is called for, that some property is yet to be recovered, that there is propensity to commit further offences, that his other two accomplices are still at large and that he would interfere with investigations.

In his submissions the applicant is raising a defence that he was erroneously linked to the commission of the offences. That he was never near the alleged places where such offences were committed. He stated that on the day he was arrested he was in the company of his friend Kelvin Kudzayi Chawana who came to pick him at his house at 0800 in Old Highfield. They later met Franklin who is Kelvin's friend. They proceeded to Machipisa Shopping Centre where they decided to accompany Kelvin to Chitungwiza who then called his girl- friend Shyleen Nyamweda. At Machipisa one Muturikwa came with a bag containing various properties which I mentioned above. When Ignatious was talking to his girlfriend in Chitungwiza, the police arrived and ordered Ignatious to stop. The police shot Ignatious dead. Kelvin drove off the car and the police shot at them killing Shyleen and Kelvin. Applicant was then shot from his back while Franklin and Muturikwa escaped. His only friend was Kelvin and he did not know the rest. He claimed to have been shot while seated in the car and was not running away.

The principles which are followed in an application for bail pending trial are set out in s 117 of the Criminal Procedure and Evidence Act [*Chapter 9:07*]. The same principles were summarized in a number of cases. See *Makamba v The State* SC 30/04, *Aitken and Anor v Attorney General* 1992 (1) ZLR 249.

In the case of *Makamba v The State* (*supra*), the principles were stated as follows:

- “1. Whether the applicant will stand trial in due course;
2. Whether the applicant will interfere with the investigations of the case against him or temper with the prosecution witnesses;
3. Whether the applicant will commit offences while on bail;
4. Other considerations the court may deem good and sufficient”

In *casu*, the applicant does not deny being at the scene of the arrests. His association

with the other robbers is not consistent with a person who was not involved in the robberies. The fact that applicant was shot at the back shows that he was running away as well. The offences are serious and attract a long custodial sentence. The fact that his other accomplices Franklin and Mturikwa are at large means that if released on bail applicant may team up with them and commit further offences. The number of counts also shows a high degree of propensity to commit further offences. I agree with the respondent's submissions that his degree of involvement is a fodder for the trial court. In my view, therefore, the applicant is not a good candidate for bail. The recovered property links him to the robberies.

Wherefore, in the result, the application for bail pending trial is dismissed.

*Muunganirwa & Co*, applicant's legal practitioners  
*National Prosecuting Authority*, respondent's legal practitioners.