

TOBIAS CHITUKUDZA  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
BHUNU J  
HARARE 31 March 2015 and 5 May 2015

### **Bail Application Pending Trial**

Self-actor  
*A. Muziwi*, for the respondent

BHUNU J: This is an application for bail pending trial. The applicant Tobias Chitukudza is charged with attempted robbery as defined in s 126 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

He is a police officer aged 24 years stationed at Highlands Police Station. He is of fixed abode residing at 8558 Budiro 58. He is alleged to have attempted to rob the complainant on 12 March 2015. The brief facts giving rise to this charge are that on the day in question clad in police uniform and in the company of an accomplice Tendai Dodzo who is still at large he waved the complainant to stop at the intersection of Borrowdale Road and Addington Road. The applicant was driving a Toyota Corolla Motor vehicle registration number ACU 2794.

Upon disembarking from his motor vehicle the complainant was confronted by the applicant who accused him of proceeding against a red robot in contravention of s 48 of the Road Traffic Act [*Chapter 13:11*]. The complainant asked the applicant to identify himself and he failed to produce his police identification card. At that stage one of the accused produced a flick knife and demanded the car keys and cash from the complainant.

Realising that the applicant and his companion were criminals the complainant confronted and charged towards the two who took fright and fled in their get-away car towards the city centre with the complainant in hot pursuit cinema style. The complainant while chasing after his would be robbers managed to raise CID Vehicle Theft Squad Crack Team.

The reaction team immediately got into action and intercepted the applicant's car at the intersection of Re kai Tangwena and Bishop Gaul. The team of detectives who were driving a Marked BMW ZRP 0045G identified themselves through a loud hailer ordering the applicant to stop. The applicant ignored the instruction to stop and continued to flee. A high speed chase then ensued with the police sounding their siren and the applicant determined to evade arrest.

In the process of fleeing from the police the applicant fortuitously bumped into a car that had stopped in response to the police siren. Both the applicant and his accomplice then took to their heels. Despite warning shots being fired they did not stop. They headed to take cover in a thicket adjacent to Belvedere Suburb. The applicant was only arrested after he had been shot and wounded. His accomplice Tendai Dodzo managed to escape and is still unaccounted for. A search of the motor vehicle led to the recovery of an arsenal of police paraphernalia comprising items of police uniforms.

In his plea for bail the applicant remonstrated with the court to grant him bail to enable him to seek medical attention from private doctors. He assured the court that he will not abscond because he is still a police officer and a responsible family man of fixed abode. He is a citizen of this country and as such he will not abscond to other countries.

The State strenuously opposed bail on the grounds that it has a water tight case against the applicant as there was no break of the chain of events from the time he committed the offence to the time he was arrested. His conduct during the whole episode betrays a determined resolve to evade arrest and defeat the course of justice. He therefore cannot be trusted to stand trial if released on bail. In the case of *S v Phiri & Another* 121/03 this court held that an accused who attempts to run away from the police during his arrest cannot be trusted to stand trial if granted bail.

The applicant is alive to the seriousness of the offence. He is obviously aware of the dire consequences upon conviction hence his concerted effort to escape. Although he is still a policeman upon conviction he is definitely going to lose his job and condemned to a lengthy period of imprisonment.

The behaviour of the applicant at the time of his arrest is an important indicator as to whether he can be trusted to stand trial if granted bail. In this case he fled from the scene of crime. When intercepted by the police and ordered to stop, he did not comply but sought to flee from the police endangering his own life, that of his accomplice and other road users.

After being involved in an accident he fled into the bush. Had he not been shot the police were unlikely to catch up with him. He has not cooperated with the police. Although all the available evidence shows that he was in the company of an accomplice who is still at large he continues to shield his accomplice maintaining that he was alone during the whole episode despite the existence of eye witnesses who saw him in the company his fugitive accomplice.

Although the applicant was shot and wounded in the course of his arrest the police and prison authorities took good care of him and ensured that he received adequate medical attention. His life does not appear to be in danger.

For the foregoing reasons the application can only fail. It is accordingly ordered that the application for bail pending trial be and is hereby dismissed.

*The Prosecutor General*, respondent's legal practitioners