

JACKSON CHIGWASA
and
BENJAMIN ZULU
and
MACDONALD MUNYARADZIMATORERA
versus
THE STATE

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 31 March 2015 and 14 May 2015

Self-Actor
S.W Munyoro, for the respondent

Application for Bail Pending Trial

BHUNU J: This is an application for bail on the basis of changed circumstances. The applicant was denied bail by this court on a charge of murder as defined in s 47 of the Criminal Law (Codification and Reform) Act [*Chapter. 9:23*]. He is jointly charged with 2 others Benjamin Zulu and Macdonald Munyaradzi Matorera who were granted bail by consent of the State on 5 September 2014. They are jointly charged with murder in the course of a robbery.

The applicant cites the granting of bail to his co-accused as a significant change of circumstances warranting him being granted bail as well. His application is premised on the dicta in *S v Ruturi* 2003 (1) ZLR 537. In that case Chinhengo J held that if there is no basis for differentiating the treatment to be accorded to persons who are jointly charged with an offence, then they should be treated in like manner, whether in respect of bail, sentence or any other ground.

The learned Judge however makes it clear in that judgment that the norm is that accused are more often than not treated differently because in most cases their circumstances differ. To this end the headnote reads:

“If there is no basis for differentiating the treatment to be accorded to persons who are jointly charged with an offence, then they should be treated in like manner, whether in respect of bail,

sentence or any other ground. In practice, it is not often that persons jointly charged with the same offence are treated equally in every respect: factors personal to them may set them apart for purposes of the grant or refusal of bail. Much can be said about the imposition of sentence. This does not, however, detract from the general principle that that persons in equal circumstances must be treated equally.”

Taking a cue from the above dicta the State has argued with some force that unlike his counter parts granted bail by consent, the evidence against the applicant is overwhelming. His fingerprints were found and uplifted from the scene of crime as well as from the motor vehicle used to ferry the stolen property from the scene of the murder. The applicant made indications to the police that led to the recovery of the bulk of the recovered stolen property.

The evidence against his accomplices is rather weak in that they were only arrested because the applicant had implicated them. Apart from his mere say so there is no independent evidence linking them to the commission of the offence.

The offence is serious such that it is punishable by death. Considering the severity of the likely sentence upon conviction, the likelihood of abscondment if the applicant is granted bail cannot be excluded. There are therefore no changed circumstances for the better in that investigations are now complete and his trial is imminent. The day of reckoning is coming which might induce him to abscond.

For the foregoing reasons there is ample justification for differentiating the applicant from his accomplices who were granted bail by consent. The application for bail on the basis of changed circumstances is therefore devoid of merit. That being the case, it cannot succeed.

It is accordingly ordered that the application be and is hereby dismissed.

The Prosecutor General's Office, the respondent's Legal Practitioners