TICHAONA MHANDU
versus
THE STATE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 20 & 22 July 2015

Bail Application

Applicant in person
M. Manhamo, for the State

ZHOU J: The applicant stands accused of committing ten counts of robbery as defined in s 126 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*], it being alleged that on the various occasions stated in the charge sheet the accused person used almost the same *modus operandi* to violently immobilize his victims before stealing from them. The applicant also faces two counts of assault as defined in s 89 of the same Act. All the offences were committed between the months of January and May 2015. The applicant was arrested on 8 May 2015. He now applies to be released on bail pending trial. The application is opposed by the respondent on the grounds that the applicant will abscond if he is released on bail given the seriousness of the charges against him. The respondent also expresses the fear that the applicant will commit further offences, as his conduct reveals a propensity to commit the violent crimes of robbery and assault. The third ground of opposition is the likelihood of interference with the witnesses by the applicant given that he stays within the same area in which he allegedly committed the offences with which he is being charged.

As shown by the authorities, the attitude of the police or prosecutor, though not necessarily decisive, is a relevant factor to consider in a bail application. See *Mahata* v *Chigumira NO & Anor* 2004 (1) ZLR 88(H) at 92 D-E. That factor will be considered

together with all the other relevant circumstances. Each case will depend on its own facts.

Section 117(2) (a) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] lists the circumstances in which the Court will consider denying bail to an accused person. These are where:

(i) the release of the accused will endanger the safety of the public;
(ii) the accused will not stand trial or attend for his sentence;
(iii) the accused will attempt to influence or intimidate witnesses;
(iv) the release of the accused will undermine or jeopardize the objectives or proper functioning of the justice system, including the bail system.

The concern regarding the danger which the applicant represents to the public is legitimately predicated upon the very amazing consistency with which the applicant allegedly attacked his victims. In all the cases of robbery the applicant is alleged to have used "an unidentified hard object" to strike the victims so skilfully that he rendered them helpless. The offences were committed within the same general area of Chitungwiza which is also the applicant's area of residence. The applicant does not appear to be seriously contesting the allegations against him. He makes an equivocal statement regarding his innocence but, as will be shown below, there are facts which sufficiently link him to the offences.

As regards the contention that the applicant will not stand trial, the approach to that factor is elegantly articulated in the judgment of the Chief Justice in *S v Jongwe*2002 (2) ZLR 209(H) at 215B-C, as follows:

> "That in judging the risk that an accused person would abscond the court should be guided by the following factors:
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> (i) the nature of the charge and the severity of the punishment likely to be imposed on the accused upon conviction;
> (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."

In the case of *S* v *Fourie* 1973 (1) SA 100 (D) at 101 the court emphasised that it is a fundamental tenet of the proper administration of justice that an accused person stands trial

and if there is any cognizable indication that he will abscond if released from custody, then the court should uphold the dictates of justice by refusing to grant bail, even at the expense of the liberty of the accused person and the presumption of innocence which are firmly entrenched in the Constitution of Zimbabwe. Put in other words, the fundamental rights must yield to the proper administration of justice in appropriate circumstances.

The applicant faces multiple counts of robbery. Robbery is a serious offence which invariably attracts a custodial sentence except in very exceptional cases. It is true that the seriousness of the charge is not *per se* a ground for denying bail. But when that seriousness is accompanied by other factors, such as the multiplicity of the offences, then it weighs heavily against the granting of bail. Admitting the applicant to bail in circumstances such as those which obtain *in casu*, would undermine the justice system in general and the bail system in particular. As regards the strength or weaknesses of the State case the court must assess the allegations as contained in the State papers and consider whether the applicant has rebutted those allegations. See *S* v *Makamba* (3) 2004 (1) ZLR 367 (S) at 375A-D; *S* v *Ncube* 2001 (2) ZLR 556 (S). In respect of counts 1, 8 and 10 some property belonging to the complainants was recovered from the applicant. In the case of count 1, the applicant is alleged to have sat with the complainant and had a conversation whilst they were at Chicken Inn, Makoni Shopping Centre, Chitungwiza. He then accompanied the complainant before attacking him when they arrived at the gate to the complainant's residence. As pointed out earlier on, the applicant has said nothing to rebut the *prima facie* case against him. Instead, he concentrated on what he referred to as personal circumstances peculiar to him, which are that he is married to three women and has six children, and that he offers private lessons to some people. There is nothing peculiar about those facts in relation to an application for bail by a person facing such serious allegations.

As for the likelihood of interference with witnesses, the risk of interference must be well founded and not based on unsubstantiated allegations and suspicions. *S* v *Jongwe* (*supra*) at 215 D. The applicant stays in his "area of operation" and if the allegations against him are valid then he would surely know where some of the victims who would be the witnesses reside. The predisposition to violence shows that he can even intimidate the witnesses.

In all the circumstances of this case, the applicant is clearly not a suitable candidate

for admission to bail.

In the result, the application for bail is hereby dismissed.

National Prosecuting Authority, respondent's legal practitioners