

CLEVER KAFERO
versus
THE STATE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 5 & 10 October 2016

Bail Application

S Ganya, for the applicant
A Muziwi, for the respondent

ZHOU J: The applicant was arrested on 14 September 2016 on allegations of committing the offence of attempted murder as defined in s 89 as read with s 47 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. He has now approached this court seeking to be admitted to bail pending trial. The application is opposed by the respondent.

The allegations against the applicant are that on 13 September 2016 he was observed by police officers Constables Tapiwanashe Mupfururi and Richard Nandi picking up passengers at an undesignated point along Sam Nujoma Street in Harare. He was driving a commuter omnibus, a Nissan Caravan with registration numbers ADS 8676. Upon observing the two police officers who were patrolling the area the applicant started to drive off. He was signalled to stop but continued driving at a high speed towards the police officers. He struck one police officer with the front left side of his motor vehicle. The police officer, Constable Mupfururi, was flung onto the pavement and sustained serious head injuries and bruises all over the body. The officer was taken to Parirenyatwa hospital where he was admitted. The applicant, it is alleged, did not stop but continued driving at a high speed along Sam Nujoma Street. He subsequently abandoned the motor vehicle along Mazowe Street and advised another person to collect it from there.

In terms of s 50 (1) (d) OF THE Constitution of Zimbabwe a person who has been arrested and detained has a right to be released unconditionally or on reasonable conditions pending a charge or trial unless there are compelling reasons justifying his or her continued

detention. The respondent contends that in the present case the compelling grounds to keep the applicant in detention are that the offence which he is alleged to have committed is a very serious one. It has also been submitted that the evidence against the applicant is overwhelming as he was seen by some witnesses when he committed the offence. He also escaped in his motor vehicle after committing the offence.

The seriousness of the offence is not *per se* a compelling reason for denying an arrested person who has not been convicted the right to liberty. It must be considered together with the other factors. In the present case not only is the offence serious in the sense that it involved striking a police officer who was on duty and was trying to stop the applicant from committing an offence; a severe penalty is likely to be imposed. Further, the evidence against the applicant is very strong. The offence was committed in broad day light around 1300hrs. It has been stated that witnesses saw the applicant as he committed the offence and when he drove away at a high speed. The applicant's counsel admitted that the applicant indeed saw the police officers when they arrived and he drove away in order to escape from them. Counsel suggested that in the commotion that ensued the applicant never saw or realised that his motor vehicle had struck a police officer who was trying to stop him.

Leaving aside the inherently unconvincing nature of that submission, the issue of whether the applicant indeed saw the police officer when he struck him by his motor vehicle is for the trial court to determine. The fact is that the witnesses saw his motor vehicle when it struck the police officer. He admits that he was the one who was driving the motor vehicle in question which is clearly described and identified by its registration numbers. He is therefore sufficiently linked to the offence. The strong evidence against him, coupled with the seriousness of the offence, the likely sentence, and the fact that he escaped after committing the offence show that he is likely to abscond if he is admitted to bail. He has already shown an inclination to run away in order to avoid the legal consequences of his conduct.

There are therefore very compelling grounds not to admit the applicant to bail at this stage.

In the result, the application for admission to bail I dismissed.