

SOLOMON MAKUMBE
and
SILAS PFUPA
versus
THE STATE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 20 September 2016

Bail Application

Mrs *G Dzitiro*, for the applicants
E Nyazamba, for the respondent

ZHOU J: On 26 February 2016 the two applicants, who are facing a charge of treason as defined in s 20 (1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] were admitted to bail by this court. The conditions upon which they were granted bail pending trial are set out in the judgment by MAWADZE J in *Solomon Makumbe and Silas Pfupa v The State* HH 157-16. The conditions are as follows:

1. that each of the applicants pay the sum of US\$200.00 with the clerk of Court Harare Magistrates Court
2. that both applicants are surrendered into the custody of Colonel Charles Mashava the Director of Military Intelligence and shall both reside at Zimbabwe National Army Cranborne barracks, Harare, until this matter is finalised
3. that each of the applicants shall report at CID Law and Order Harare Central Police Station every Monday and Friday between 0600 hours and 1800 hours.
4. that the second applicant shall surrender his passport to the clerk of court, Harare Magistrates Court; and
5. both applicants shall not interfere with investigations or state witnesses in this matter.

The applicants have now approached this court seeking the substitution of paras 2 and 3 of the order granted in HH 157-16 with the following conditions.

- “2. The 1st applicant shall reside at House No. 29203 L. Extension, Chitungwiza while 2nd applicant shall reside at House No. 422, 230 Close, Budiro 1, Harare until the trial in this matter is finalised.
3. each applicant shall report at CID Law and Order Harare Central police Station on the last Friday of each calendar month between 0600 and 1800hours.”

The applicants first ground for seeking the above relief is that Colonel Charles Mashava was assigned to attend official duties in China. The applicants attached a copy of a letter by the Secretary to the President and Cabinet showing that Colonel Mashava was to go on 11 months official visit to China from 31 August 2016. The instant application was filed after that day, on 6 September 2016. The applicants have not shown how the visit of Colonel Charles Mashava would make it impossible to continue to reside at Cranborne barracks. As was correctly submitted on behalf of the respondent, it is clear that the applicants were placed under the custody of Colonel Mashava in his official capacity. Their residence at the barracks does not depend on the personal or physical presence of Colonel Mashava at the barracks. The absence of Colonel does not, therefore make it impossible or inconvenient for applicants to comply with the bail conditions. It was accepted by the applicants’ counsel that the applicants can travel to any place within the country, including visiting their families. The fact that security personnel has to accompany them is not a basis for altering the bail condition particularly as it was admitted, that the security personnel does not necessarily get into the applicants’ house when they visit their wives and family.

The applicants also pointed to the admission of one Borman Ngwenya. The precise circumstances of Borman Ngwenya were not given. His admission to bail cannot be a basis for seeking alteration of their bail order. In any case, Ngwenya was not a co-applicant in the application which gave birth to the judgment HH 157-16.

As regards the reporting conditions, there are no new facts which justify interference with the order of this court. Further, while it is desirable to have the applicants tried as expeditiously as possible, the delay involved in this case is not out of the ordinary.

In all the circumstances, the application is without merit.

The application is, accordingly, dismissed.

Mutumbwa, Mugabe & Partners, 1st and 2nd applicants'' legal practitioners
National Prosecuting Authority, respondent's legal practitioners