

SIMBARASHE TIYANANI
versus
THE STATE

HIGH COURT OF ZIMBABWE
CHAREWA
HARARE, 21 & 28 December 2016

Bail Application

Applicant in person
A Muzivi, for respondent

CHAREWA J: The applicant is facing allegations of robbery as defined in s 126 of the Criminal Law (Codification and Reform) Act, [*Chapter 9:23*], in that on 22 November 2016 and at around 1910 hours, he, in the company of four others who are still at large, intentionally used violence, with fists and booted feet, to rob the complainant of his driver's licence and property valued at \$385.00.

The applicant is a 21 year old young man who denies the charge. He alleges that he was merely the driver of a commuter omnibus vehicle in which two of the passengers started fighting. He therefore caused them to disembark by the rail/road flyover bridge along Seke Road and left them to sort out their differences while he went about his business of ferrying passengers to their destinations. He did not report the matter to the police and has no knowledge of any robbery committed against complainant.

The respondent opposes bail, alleging that:

1. The complainant positively identified applicant as one of his assailants,
2. The applicant failed to stop after an accident and did not report such accident to the police,
3. Applicant fled from the scene when the police came to complainant's assistance, and finally that,

4. The allegations against applicant are so serious and the evidence so strong that conviction and a custodial sentence are highly likely such that applicant may be induced to abscond.

First of all, I must comment that the charge sheet and the state outline do not properly speak to each other, raising questions about whether the respondent is quite certain of its facts and evidence of the event. The State outline alleges that applicant initially caused an accident against the complainant, failed to stop at the scene and when complainant held on to the vehicle, abducted him on the pretext of going to report to the police. Yet the offences arising out of this narrative are not part of the charges which the applicant is facing, particularly since at this stage, applicant appeared to have formed no intention to commit robbery.

Secondly, the respondent has not alleged that if applicant is released on bail, he is likely to interfere with witnesses at all, or jeopardize investigations regarding the alleged outstanding accomplices.

In so far as the charge preferred against the applicant is concerned the applicant argues that he should be admitted to bail because:

1. He is a young first offender who has raised a reasonably arguable defence to the charge, which, *prima facie*, is not doomed to fail;
2. He is of fixed abode and has given the names and identification of those of his relatives prepared to stand surety for his appearance in court, thus minimising the likelihood of his absconding;
3. Besides he is gainfully employed as a commuter omnibus driver;
4. Further, he has offered quite stringent reporting conditions in order to ensure his liberty pending his trial; and
5. Finally, while the matter was remanded to 27 December 2016, which was declared a public holiday, no indication has been given by the respondent of the likely date of the commencement of applicant's trial.

It is trite that a court must grant bail where there are positive grounds. In my view, the applicant has discharged the *onus* upon him to show that, on a balance of probabilities, he should be granted bail, after weighing his individual right to liberty against the exigencies of the administration of justice.

Consequently, it is ordered that the application for bail pending trial is granted on the following conditions:

- a. The applicant shall deposit the sum of \$50.00 with the Clerk of Court, Harare Magistrates Court;
- b. The applicant shall reside at KB 16 A, Akedish, Epworth, Harare;
- c. The applicant shall report twice a week, every Monday and Friday at ZRP Domboramwari between the hours of 6 am and 6 pm until his trial is finalised;
- d. The applicant shall not interfere with state witnesses and investigations.

National Prosecuting Authority, respondent's legal practitioners