

ADRON MUTAURWA
versus
THE STATE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 22 September and 3 October 2016

Bail Application

W Chiriseri, for the applicant
Mrs Fero, for the respondent

ZHOU J: The applicant was convicted by the Magistrates Court at Gokwe of contravening s 45 of the General Laws Amendment Act (No 11) 2011. The facts upon which the applicant was convicted are that on 4 January 2016 and at Madhamu Business centre, Gokwe North, he unlawfully sold a pangolin or exposed it for sale when in fact he had no permit to deal in that protected animal. On 2 February 2016 the applicant was sentenced to the mandatory 9 years imprisonment.

On 19 May 2016 the applicant appealed to this court against both the conviction and sentence. The appeal is still pending. He has in terms of the instant application approached this court seeking admission to bail pending the determination of his appeal. The application is opposed by the respondent on the basis that his appeal has no prospect of success in respect of both the conviction and the sentence imposed. The lack of prospect will, according to the respondent, induce the applicant to abscond. It has also been submitted on behalf of the respondent that appeals no longer experience long delays before they are heard especially, as *in casu*, where the record of the proceedings of the court *a quo* has been transcribed and is now available.

The onus in this application is on the applicant to show on a balance of probability that there are positive grounds justifying his release on bail pending determination of his appeal. This

court is enjoined to balance the liberty of the applicant against the proper administration of justice guided by the factors which include the reasonable prospect of success of the appeal, the likelihood of the applicant absconding, the length of the sentence imposed and the likely delay before the appeal can be heard. The above factors have to be weighed one against another. Each one of them is therefore not necessarily decisive.

The evidence, which was largely common cause, is that the applicant arranged to meet police officers who were pretending to be the potential buyers of the protected animal in Chegutu. The applicant then led the police officers to Gokwe where the Pangolin was. He contacted his colleague one Collen Makainganwa who had the pangolin. The applicant's contention is that he agreed to arrange for the sale of the pangolin after persistent persuasion by one Mupositori. That is clearly not a defence which is valid at law. The applicant had an election to decline to be involved in the deal if indeed he was not selling the protected animal. The court is convinced that his appeal has no prospect of success. The fact that the applicant is the one who arranged with the police officers who he thought were prospective purchasers to meet in Chegutu and, thereafter, led them all the way to Gokwe, clearly places him at the centre of the transaction.

The sentence of 9 years imprisonment is quite considerable. That is the minimum sentence prescribed by law where there are no special circumstances. The applicant did not establish any such circumstances. His appeal against the sentence imposed therefore enjoys no prospect of success. When the sentence is taken together with the lack of prospect of success against the conviction, it is clear that the risk of absconding is very real. This, therefore, is not an appropriate case for the applicant to be admitted to bail.

In the result, the application is dismissed.

Rubaya & Chatambudza Legal Practitioners, applicant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners