

EDMUND MATINYENYA
versus
STATE

HIGH COURT OF ZIMBABWE
NDEWERE J
HARARE, 19 February 2019 & 30 April 2019

Bail Ruling

R. M Macharaga, for the applicant
M Mtamangira, for the State

NDEWERE J: The applicant was arrested on 21 November 2018 in CRB Number 13467/18 and 14526/18 on a charge of theft of a motor vehicle. His application for bail was initially dismissed. He later approached the court on the basis of changed circumstances when his scheduled trial did not start. He then got bail on the basis of changed circumstances on 23 January 2019.

The applicant was then arrested on 29 January 2019 for the present case under CRB 1146/19 for theft of motor vehicle which occurred before the 2018 CRB matter.

The State opposed bail. It said the charge which the accused was facing was very serious and a lengthy prison term was likely. It said this would induce the applicant to abscond if granted bail. The State said the evidence against the accused was overwhelming. It said the applicant was in Zimbabwe when the offence was committed and that the fingerprints uplifted from the scene of crime matched those of the applicant.

The State further said the applicant was a flight risk because he frequently travelled to South Africa as confirmed by an extract from his passport. The State said he had connections in South Africa and if granted bail, he was likely to abscond to that country and avoid standing trial.

The State referred to *S v Masuku* HH 79/02 wherein the court held that where there are indications that if granted bail, the applicant will abscond, bail should not be granted.

The applicant said he was a good candidate for bail. He was aged 44, was married and had three children, two of whom were minors. He said his family solely depended on him for its everyday living so he needed to be out on bail in order to fend for his family. He said he was not employed; but he had fixed abode at 1645 Sally Mugabe Heights, Harare and regarded Zimbabwe as his permanent home. He said he was not a flight risk and could not abscond because his passport was already in the custody of the Clerk of Court in terms of a condition of an earlier bail application.

After considering the submissions of both the State and the applicant, the court found compelling reasons to deny the applicant bail in the present case.

The court noted from the request for remand form that the accused is facing the serious charge of theft of a motor vehicle valued US\$30 000.00 on 30 September 2018. The motor vehicle was not recovered. The court further noted that the applicant's business address is given in the same request for remand form as DT Group, First Floor, Innovation Hub, Pretoria, South Africa. The State's submissions were that fingerprints which matched those of the applicant were uplifted from the scene of crime, from the complainant's gate.

The court further noted the extract from the applicant's passport which showed that he is a frequent traveller to South Africa as indicated by the stamps on his passport from the Beit Bridge border post which show several entries and departures through that port in 2013, 2014, 2015, 2017 and 2018. Some stamps reveal trips to Mozambique from 2014 and other stamps indicated travels via the Chirundu border post in 2015.

The State fears that the accused, if granted bail, will abscond and not stand trial are justified. He is based in a foreign country as indicated by his business address and before his arrest, he frequently travelled to South Africa and Mozambique and to Zambia or beyond, through the Chirundu border post. Such an applicant can easily go and live in a neighbouring country, and avoid standing trial. The fact that he surrendered his passport in another bail matter is not a sufficient safeguard. It is common knowledge that people who are fleeing Zimbabwe can easily leave the country using unlawful exits. So despite having surrendered his passport, the applicant is still a flight risk.

The risk of him fleeing is increased by the serious charge he is facing, where a long custodial sentence is likely to be passed. The fact that his fingerprints matched those uplifted from the complainant's gate is an indication of the strength of the State case. As correctly pointed out in *S v Jongwe* 2002 (2) ZLR 209 it is not in the interest of justice to admit an accused to bail where the charges are serious and where there is overwhelming evidence.

So cumulatively, all the issues raised by the State show that the applicant is not a good candidate for bail. Taken together, the issues raised by the State are compelling reasons to deny the applicant bail.

It is therefore ordered that the applicant's application for bail be and is hereby dismissed.

Mugiya & Macharaga Law Chambers, applicant's legal practitioners
The National Prosecuting Authority, respondent's legal practitioners