

JIMMY ZUVA
versus
THE STATE

HIGH COURT OF ZIMBABWE
NDEWERE J
HARARE, 23 July, 2019 and 20 September 2019

Bail ruling

A. Rubaya, for applicant
S.W. Munyoro, for State

NDEWERE J: The applicant was arrested whilst in possession of raw ivory valued at \$1 828.35 on 24 June, 2019. He had no permit to deal in ivory.

When he was placed on remand the State, through the police, opposed bail. The applicant was remanded in custody and referred to the High Court for bail consideration. The applicant filed an application for bail to the High Court on 16 July, 2019. The State filed a response in which it stated that it did not oppose bail because the applicant's co-accused had been granted bail by consent.

The court sought clarification from the investigating officer since the information about the co-accused who was said to have been granted bail did not form part of the record.

The investigating officer came and testified in court. He said the applicant was the one who was arrested whilst he was in possession of a sack containing the raw ivory. He said on being questioned, he admitted the offence and a warned and cautioned statement was recorded from him. The investigating officer said the applicant was the one who implicated the co-accused who was granted bail by consent. He said the only evidence against the co-accused was the implication by the applicant and nothing else.

The investigating officer's view was that since the evidence against the applicant was overwhelming, and since the charge he was facing carried a mandatory custodial sentence, bail should not be granted otherwise the mandatory sentence may induce the applicant to abscond.

The investigating officer said investigations were complete and they were just waiting for the trial date which was 25 July, 2019.

The investigating officer maintained his position during cross-examination, that there was overwhelming evidence against the applicant; compared to his co-accused.

The court considered the evidence of the investigating officer and noted that there were distinguishing features between the applicant's case and that of his co-accused. The State had a strong case against him in that he was arrested whilst in possession of the ivory and he admitted the offence in his warned and cautioned statement and the statement was later confirmed. By contrast, his co-accused was arrested just on the applicant's word. The State's case against the co-accused was therefore weak, hence the consent to bail in his case.

In addition to the strong case against the applicant, if he is convicted, he will face a mandatory prison term. Indeed, the fear of a mandatory prison term is likely to induce the applicant to abscond if granted bail.

Bail is about balancing the interests of an individual's liberty and the interest of the administration of justice. We have a situation where investigations are complete and all that is left is the trial. It is not in the interests of the administration of justice to release the applicant on bail when trial is imminent in a situation where there is a genuine fear of abscondment, given the mandatory custodial sentence for the charge he is facing.

Since there was already a trial date, it was better that the accused stood his trial whilst in custody, than face the risk of his abscondment if granted bail pending trial.

It is ordered that the application for bail pending trial be and is hereby dismissed.

Rubaya and Chatambudza legal practitioners, applicant's legal practitioners
National Prosecuting Authority, respondent's legal practitioner