

MUNYARADZI KARIMBA
versus
THE STATE

HIGH COURT OF ZIMBABWE
MWAYERA J
MUTARE, 31 January 2019 and 7 February 2019

Bail pending trial

J Fusire, for the applicant
Ms T L Katsiru, for the respondent

MWAYERA J: The applicant who is facing four counts of stock theft as defined in s 114 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*], approached the court seeking to be admitted to bail pending trial. It is the State's contention that on 25 May 2018, 27 May 2018 and on 5 January 2019 the accused unlawfully took 10 cattle knowing that the complainants in the 4 counts were entitled to own or possess or control the livestock or realising that there was a real risk or possibility that the complainants were the owners and entitled to possess or control the livestock and intending to deprive the complainants permanently of ownership, possession or control or realising that there was real risk or possibility that he might so deprive the complainants permanently of their ownership, possession or control.

The respondents opposed the application for bail. The State counsel *Ms Katsiru* argued that the interests of the administration of justice would be prejudiced if the applicant were to be admitted to bail. The respondent presented that the state case is strong given there are eye witnesses. For stock theft involving cattle given the mandatory imprisonment of 9 years imprisonment even for one count would act as an inducement to abscondment. Further the State argued that given cattle are a source of livelihood theft of 10 cattle is viewed as serious that admission to bail is likely to induce shock and outrage in the community. The applicant on the other hand sought to be admitted to bail arguing that he did not commit the offences and that he is innocent.

In applications for bail pending trial the court has to seek to strike a balance between the constitutionally guaranteed right to liberty and the societal interests that the matter be

prosecuted to its logical conclusion or put differently the societal interests that the interests of administration of justice is upheld.

The applicant is facing 4 counts of a serious offence of stock theft. It has been stressed in a number of cases that the seriousness of an offence on its own is not good enough reason not to admit the applicant to bail. See *S v Hussey* 1991 (2) ZLR 187 (S), *Aitken and Anor v Attorney General* 1992 (1) ZLR 255, *Jonathan Maala v The State* HH 122-15. The applicant is facing very serious offences 4 counts of stock theft which would in the event of conviction entail lengthy imprisonment if there are no special circumstances. However, the seriousness of the offence should not be over emphasised at the expense of the right to liberty. Section 50 (1) (a) of our Constitution is instructive. Any person who is arrested must be released unconditionally or on reasonable conditions pending charge or trial unless there are compelling reasons justifying continued detention. The provisions of s 117 of the criminal Procedure and Evidence Act [*Chapter 9:07*] give useful guidelines on factors the court has to consider in dealing with whether there are compelling reasons justifying the denial of bail. They among others are outlined as follows:

- (i) Whether the accused if released on bail will endanger the safety of public or any person or will commit an offence referred to in the first schedule.
- (ii) Whether accused will stand trial.
- (iii) Whether the accused will attempt or influence or intimidate the witnesses or conceal or distort evidence.
- (iv) Whether the accused's release will undermine or jeopardise the objective or proper functioning of the criminal justice system inclusive of the bail system.

These factors, it is my view should not be considered in isolation. Rather they should be cumulatively considered and juxtaposed to the circumstances of each case. Where it is clear that the interest of administration of justice will not be prejudiced by admission of the applicant to bail then it follows there are no compelling reasons warranting denial of bail. *In casu* although the charge the applicant is facing is serious, upon considering all the relevant factors this is a matter where bail conditions would appropriately allay the state's fears. See *Monica Lubimb v The State* HB 114/11.

The seriousness has to be considered in conjunction with other factors like possibility of abscondment and likelihood to interfere with witnesses. In this case the accused has not shown tendencies of fleeing. There is no evidence that after the alleged commission of the offences he fled from the jurisdiction of the court. Further there is no evidence that he interfered

or showed inclination to interfere with witnesses. That his release on bail is likely to induce shock and outrage among the members of the community in the absence of evidence stating that the applicant or society safety is at risk or under threat is not good enough reason for interfering with the individual right to liberty. In any event societal interests can be cured by stringent reporting conditions. The State fears of abscondment can be cured by appropriate reporting conditions. Upon considering the right to liberty anchored on the presumption of innocence and the interests of administration of justice, this is a case where bail conditions are deemed decisive. There are no compelling reasons why the applicant should not be admitted to bail. Bail is not in anticipation of punishment but on entitlement because of the right to liberty and presumption of innocence. Only in circumstances where the administration of justice is at risk or prejudiced should one be denied bail pending trial.

Accordingly the applicant is admitted to bail as follows:

IT IS ORDERED THAT

1. The applicant pays \$200.00 with clerk of court Mutare Magistrate Court before release.
2. The applicant resides at number 407 Area 3 Dangamvura Mutare until the matter is finalised.
3. The applicant reports once every week on Fridays at Mutare Rural Police Station between 600am and 600pm.
4. The applicant should not interfere with the state witnesses and or investigations.
5. The applicant should surrender any travel documents he has to the clerk of court Mutare Magistrate Court.

Legal Aid Directorate, accused's legal practitioners
National Prosecuting Authority, State's legal practitioners