

KUDAKWASHE MUSONI

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 22 APRIL 2020

Bail Application

S Sibanda, for the applicant
Ms N Ngwenya, for the respondent

MAKONESE J: The applicant is being charged with armed robbery as defined in section 126 of the Criminal Law (Codification and Reform) Act (Chapter 9:23). He faces a further charge of attempted robbery in contravention of section 189 as read with section 126 of the Criminal Code. The allegations are that the applicant together with four co-accused persons went to house number 1956 Emakhandeni Bulawayo on the 24th October 2019 and robbed Angeline Mapirimira. On the second count the state alleges that the applicant together with his co-accused attempted to rob ChiedzaSibanda at number 117 Matopos Road, Famona, Bulawayo. The applicant was arrested following a tip-off by members of the public. The applicant denies the allegations. He avers that on the day in question he was with his wife at home and never went to Emakhandeni as alleged.

The applicant contends that there is no evidence linking him to the offence. The applicant further contends that the state witnesses who participated in the identification parades identified applicant's co-accused as the alleged perpetrators of these offences. The applicant's co-accused, SibanengiNhawira, LovemoreNcube, Musa Masuku and Raymond Masawi made an application for bail under case number HCB 19/20. The application was dismissed by this court on the 6th of February 2020. In essence therefore, the applicant is imploring this court to treat him differently and grant his freedom on the basis of the equality principle emphasized in *State v Lotriet and Another* 2001 (2) ZLR 225 (H). This case is authority for the proposition

that the general principle is that persons who are jointly charged must be treated in the same way unless there are cogent reasons justifying differential treatment of one from the other. In this regard, applicant argues that he must be granted his liberty as he is not in any way linked to the commission of the offences he is facing.

In its response to his application, the state avers that the applicant is linked to these offences. It is highlighted by the state that the complainant in the armed robbery in count, one, Brighton Tazvivinga stated that after the robbery, his assailants got into a white Mazda Tribute motor vehicle and sped away from the scene. The motor vehicle in question was used as a getaway car. Investigations by the police revealed that the Mazda Tribute motor vehicle registration number AFB 8089 used in the commission of the offence belongs to Mavis Musoni of house number 1164 Old Luveve, Bulawayo. Mavis is a sister to the applicant. Mavis confirmed to the police that on the 24th October 2019, the day of the robbery, the applicant had possession of the motor vehicle. On that same day, the complainant, Brighton Tazvivinga was robbed at gunpoint.

At this stage of the enquiry and in this application for bail, the uncontroverted fact is that the getaway vehicle, the Mazda Tribute belonging to Mavis found its way into the hands of the applicant and his co-accused and used to facilitate the robbery. The motor vehicle was in the custody of the applicant according to information given to the police by Mavis. There is a link between the offence and the applicant. The state does have a *prima facie* case against the applicant. Even if the applicant was to be convicted as an accomplice, he would face a lengthy term of imprisonment.

On the second count of attempted robbery, the state alleges that on 29th November 2019 and around 1500 hours Chiedza Sibanda and Fanita Moyo were at their workplace at 117 Matopos Road, Hillside, Bulawayo. They were approached by six male adult persons who introduced themselves as police officers. They accused Chiedza of stealing cash from her employer. One of the accused persons produced a pair of handcuffs. They later demanded cash and safe keys. The owner of the premises arrived and the suspects ran away and used a white motor vehicle as a getaway car. On 23rd November 2019 following a tip-off Sibanengi Nhawira was arrested by the police. Sibanengi implicated his accomplices and indicated that the applicant was the one driving the Mazda Tribute used in count one.

In an affidavit filed with this court, the Investigating Officer, Detective Constable ClemenceMbofana indicates that the applicant voluntarily led to the recovery of the Mazda Tribute motor vehicle. The same motor vehicle was positively identified by Brighton Tazvivinga as the motor vehicle used by the accused persons during the robbery.

It is my view that, due to the weight of the evidence against the applicant he is likely to abscond if granted bail pending his trial. Once convicted, the accused is likely to be sentenced to a lengthy term of imprisonment. That possibility is likely to induce the applicant to abscond. Further, there is a real likelihood that the applicant, if granted bail, will interfere with the witnesses.

There is no guarantee that if granted bail, even with stringent conditions, the accused will not abscond to avoid trial. In applications of this nature, the court is enjoined to strike a balance between the liberty of the accused and the interests of justice. Robbery is a serious crime that attracts lengthy custodial sentences. It would not be in the interests of justice, in the circumstances of this case to grant the applicant bail at this stage.

In the circumstances, and accordingly the application is hereby dismissed.

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