

MATOBO KINGSLEY KASHWEKA
versus
THE STATE

HIGH COURT OF ZIMBABWE
MWAYERA J
HARARE, 11 February 2013

T. Moyo, for the applicant
E. Mavuto, for the respondent

Bail pending Trial - Ruling

MWAYERA J: The applicant approached the court with an application for bail pending trial. The applicant is facing two counts of criminal charges, firstly he is charged with section 45 (1) of the Parks and Wildlife Act, [*Cap 20:14*] hunt or kill any specifically protected animal and secondly unlawful possession of a dangerous weapon as defined in section 28 (1) (e) of the Criminal Law (codification and Reform) Act [*Cap 9:23*]. It is the state's contention that the accused together with accomplices entered Matendere ranch, Save valley conservancy, Bikita armed with one AK47 rifle with a charged magazine plus 38 loose live rounds of ammunition and an axe, whilst in the ranch the accused persons shot and wounded a rhinoceros being a specifically protected animal.

The State opposed the application for bail on basis that admission of the application to bail will put the interest of administration of justice into jeopardy.

The applicant on the other hand presented argument through Mr Moyo that the applicant is a suitable candidate for bail for he is a man of fixed abode and is in a position to abide by any bail conditions suggested. Further correctly advanced by the applicant's counsel is that he is presumed innocent till proven guilty by a court of law.

Indeed in applications for bail the court has to seek to strike a balance between the right to individual liberty on one hand the societal interest that is, that the applicant should stand his trial thus uphold the interest of administration of justice.

From the circumstances of the case it is apparent that the applicant had accomplices when the offences were allegedly committed one of the accomplices was arrested and admitted to bail. The other accomplice is still at large. The fact that the one accused is still at large does not assist the applicant's position for it endangers the interest of ensuring that prosecution is done or effected to its logical conclusion. The one accused was admitted to bail but his circumstances are different from the applicant in that he is not likely to abscond the court's jurisdiction since he is a Zimbabwe National. The circumstances of the applicant and that of his accomplice are different thus justifying different treatment.

Given the fact that the applicant was arrested at the scene after a shootout with police officers that is indicative of avoiding and evading the police. Cumulatively one cannot help but agree with the state given that the applicant is a foreign national the chances for him absconding are high. He envisaged signs of avoiding and evading at the time of arrest. Further to induce him into the temptation of absconding is the strength of the state case and the likely penalty in the event of conviction. I am alive to the fact that bail is not in anticipation of punishment but when admission to bail puts the administration of justice at risk then bail ought not be granted.

The law is fairly settled in applications of this nature that for considering is the right to individual liberty on one hand and the interest of administration of justice on the other. Upon weighing this it is clear the applicant is not likely to stand trial if admitted to bail and thus the ends of justice will be frustrated. Accordingly the applicant is not considered a suitable candidate for bail.

Application is accordingly dismissed.

Tamuka Moyo Attorneys, applicant's legal practitioners