

WIRIMAI GARURA
versus
THE STATE

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 12 and 25 February 2015

Application for Bail Pending Trial

C F Nyamundanda, for applicant
SW Munyoro, for respondent

TAGU J: This is an application for bail pending trial. The applicant is facing a charge of Robbery as defined under s126 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

The applicant appeared at the Magistrates Courts and was denied bail and was referred to this Honourable Court since the robbery which applicant is facing involved the use of a firearm and hence falls under Third Schedule Offences Part 1 para 3(a) of the Criminal Procedure and Evidence Act [*Chapter 9:07*].

The circumstances of the case are that on 22 November 2014 and at about 1800 hours the applicant was driving a Commuter Omnibus along Upper East, Avondale, Harare, in the company of two accomplices who are at large. The applicant and his accomplices hatched a plan to rob passengers in the commuter Omnibus in and around Harare. They were armed with a firearm and knives. The applicant and his accomplices ferried passengers at Coppa Cabbana rank intending to go to Marlborough East. The Commuter Omnibus had eighteen passengers. On the way to Marlborough East the driver diverted the route and turned into upper East towards Mt Pleasant. One of the accused persons produced a knife and shouted at the top of his voice ordering everyone to keep quiet. The other accomplice withdrew a pistol and pointed it at the other passengers whilst demanding for all bags. The applicant who was the conductor snatched complainant's handbag and stole USD \$ 440.00 and her Samsung S4

Galaxy IMEI number 358904050059490. After the robbery the applicant and his accomplices pushed the complainant out of the moving vehicle. They drove off at high speed along Pendenis Road, Mt Pleasant, Harare.

On 29 January 2015 the police details received information to the effect that the stolen cell phone was being used by Gerald Tarasikirwa. Detectives interviewed Gerald Tarasikirwa who indicated that he bought that cell phone from the applicant but had sold it to one Owen Chinopamba. The cell phone was then recovered and it was positively identified by the complainant as hers. The detectives interviewed the applicant but he failed to give an account of where he obtained it. He was then arrested.

The respondent made a concession that the applicant is a good candidate for bail. The reason being that the cell phone had changed hands hence the evidence against the applicant was weak.

The investigating officer Detective Sergeant Alice Chirombo deposed to an affidavit opposing bail. Her basis for opposing bail being that the applicant is likely to interfere with witnesses and investigations. Further, some stolen property has not been recovered, and if granted bail the applicant might hinder the arrest of the outstanding accomplices. Furthermore, he might team up with his accomplices and commit other similar offences. In the event of a conviction he is likely to be given a lengthy custodial sentence and this would induce him to abscond if granted bail.

The principles which are followed in an application for bail pending trial are set out in s 117 of the Criminal Procedure and Evidence Act [*Chapter 9:07*]. The same principles were summarized in a number of cases. See *Makamba v The State SC 30/04, Aitken and Anor v Attorney – General* 1992 (1) ZLR 249.

The principles were stated as follows:

- (1) Whether the applicant will stand trial in due course,
- (2) Whether the applicant will interfere with the investigations of the case against him or temper with prosecution witnesses,
- (3) Whether the applicant will commit offences while on bail, and
- (4) Other considerations the court may deem good and sufficient”.

In casu, the applicant was linked to the robbery by the recovered cell phone which was positively identified by the owner. His accomplices are still at large and if granted bail will

not only interfere with investigations, but also may commit further offences. The concession by the respondent is misplaced given the fact that, although the cell phone exchanged hands, the others were able to explain where they got it. The applicant dismally failed to give an account of where he got it. It follows that the doctrine of recent possession will operate against him.

Wherefore, in the result the application for bail pending trial is dismissed.

Muhonde Attorneys, applicant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners.