

ANDERSON PONGOLANI
versus
THE STATE

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 17, 18 and 25 February 2015

Application for Bail Pending Trial

T Chakurira, for applicant
D H Chesa, for respondent

TAGU J: The applicant is facing a charge of Robbery as defined in s 126 of the Criminal Law (Codification and Reform) Act [*Chapter 9.23*]. He is making an application for bail pending trial.

The application is opposed by the respondent.

The applicant has petitioned this court to grant him bail, among other things, on the basis that his co-accused was granted bail. The respondent has opposed bail on the basis that the circumstances of this applicant are different from those of the accomplice who was granted bail. The respondent submitted that the accomplices explained that they obtained the money, the proceeds of the robbery as a loan.

The investigating officer has deposed to an affidavit opposing bail.

The circumstances were that the applicant in the company of his accomplices Kudakwashe Chidoti and Fungai Shonhiwa, acting in common purpose, armed themselves with a pistol went to the complainant's house on 29 December 2014. They entered the house, tied the occupants after assaulting them and robbed them of 45 000 Euros in 500 Euro denominations. On 6 January 2015 information was received to the effect that the applicant had changed 4 500 Euros in 500 Euro denominations at Roadport bus terminus to illegal foreign currency dealers. This led to the arrest of the applicant.

At the hearing of the bail application Mr *T Chakurira* urged the court to treat persons facing similar allegation equally. Mr *D H Chesa* argued that people facing similar allegations may be treated differently.

Indeed I had sight of the facts contained in the Request For Remand form in the case of *S v Kudakwashe Chidoti and Fungai Shonhiwa* CRB 114-15/15, ref B06/15. The facts are similar to the allegations faced by the applicant. However, the investigating officer's affidavit in case CRB 14-15/15 showed that the circumstances of Kudakwashe Chidoti were different from those of Fungai Shonhiwa. On that basis Fungai Shonhiwa was not granted bail as evidenced by case B06/15.

In casu, the circumstances of this applicant are different from those of Kudakwashe Chidoti. The court appreciates the need to treat offenders the same in situations where they are facing the same charges. However, sight should not be lost of the fact that each individual's circumstances come under scrutiny when the court considers the right to individual liberty on one hand and the interest of administration of justice on the other hand. This applicant is a flight risk as he sometimes resides in South Africa where he once worked as a truck driver.

In the result, the application for bail pending trial is dismissed.

Rubaya & Chtambudza, applicant's legal practitioners
Prosecutor General's Office, respondent's legal practitioners