

EMMANUEL MAYENGA  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
MATHONSI J  
HARARE, 21 April 2015

### **Bail Application**

*L Mauwa*, for the applicant  
*T. Muchini*, for the respondent

MATHONSI J: The applicant is a 40 year old man who is unemployed and resides at 7690 Glen Norah B Harare. He faces 2 counts of armed robbery and 1 count of extortion in contravention of s 126 and s 134 of the Criminal Law Code [*Chapter 9:23*].

In the 1<sup>st</sup> count of robbery the allegations are that on 12 February 2015 he, along with his accomplice, one Maxwell Dovo, accosted the complainant at the robot controlled intersection of Churchill road and Borrowdale Roads. He was clad in police uniform as he falsely accused the complainant of driving through a red robot near State House. His accomplice produced a firearm which he used to threaten the complainant before forcing him to drive to State House. He was made to stop at a point along Sandringham road where they robbed him of \$180.00. They fled in a gate away vehicle.

In the 2<sup>nd</sup> count, it is alleged that on 20 February 2015 and at the corner of Churchill and Borrowdale Roads Harare, the applicant and 3 accomplices used the same *modus operandi* to rob the complainant of US\$200.00 before escaping in a gate-away Mazda Demio registration number ADQ 3499. The applicant was again clad in a police uniform.

In count 3, it is alleged that himself and his accomplices blocked the vehicle driven by the complainant who was coming out of a lodge along Samora Machel Avenue with his girlfriend. They extorted \$250.00 from them after making threats to them before getting away again in the Mazda Demio registration number ADQ3499.

Upon his arrest, a police uniform was recovered from the applicant which he says was allocated to him as a police constabulary. It is said that he was also positively identified by the complainants in a formal identification parade.

The applicant seeks his admission to bail protesting that he is a good candidate for bail because there is no evidence linking him to the offences which he admits are serious. He insists that he will not abscond if granted bail and will not commit further offences. As the state case against him is weak there is no incentive to abscond.

The state is opposed to bail on the basis that the offences the applicant faces are serious and upon conviction he is likely to be incarcerated for a long time which is motivation for abscondment. In addition, the manner in which the offences were committed, in the vicinity of the state president's residence, shows sophistication pointing to a likelihood to abscond and to interfere with the process if granted bail.

A bail application involves balancing between the liberty of an individual who has not been found guilty and the interests of justice which require the applicant to stand trial: *S v Dzawo* 1998(2) ZLR 536. I agree with the state that the charges facing the applicant are very serious and that if indeed a police uniform was recovered from him and he was identified by witnesses the evidence against him is indeed very strong. That, coupled with the fact that he is likely to be sentenced to a lengthy term of imprisonment if convicted, will motivate him to abscond.

Significantly the firearm which was used in the commission of the offence has not been recovered meaning that if released the applicant may not only prejudice investigations but may still use it to commit further offences. If the allegations are proved, having the temerity to use the name of the state president to commit offences means that the applicant may indeed be a dangerous person.

I conclude therefore that the applicant is not a good candidate for bail.

The application is hereby dismissed.

