

THE STATE
versus
ROBSON MUNAMBA

HIGH COURT OF ZIMBABWE
MAWADZE J
HARARE, 19 June 2015

Revocation of Bail

M.R. Mugabe, for the applicant
A. Moyo, for the respondent

MAWADZE J: On 11 June 2015 I admitted the respondent to bail on the following conditions by consent;

1. That he deposits US \$100-00 through the clerk of court of Marondera Magistrates Court.
2. That he resides at No. 7904 Natview Park Mutare.
3. That he reports at the CID Mutare Police Station every fortnight on Friday between 6am and 6pm.
4. That he does not interfere with any state witnesses on the matter.
5. That he surrenders his passport to the clerk of court Marondera Magistrates Court.

The respondent is facing a charge of attempted murder as defined in s 189 as read with s 47 of the Criminal Code.

The alleged facts giving rise to this charge can be summarised as follows;

The respondent who is said to be resident in Botswana where he is employed as a mechanic was in love with the complainant. It is alleged that the complainant who was in Zimbabwe terminated the love affair much to the chagrin of the respondent. It is alleged that on 6 May 2015 the respondent left Botswana from Zimbabwe with 5 litres of sulphuric acid which he intended to use on the complainants as punishment for terminating the love affair. The

respondent is said to have proceeded to complainants rural home in Masiyiwa village in Goromonzi, Chief Chikwakwa on 8 May 2015 with the sulphuric acid in a small bag but found the complainant not at home. He was accommodated for the night at complainants home. The next day on 9 May 2015 the respondent is said to have called the complainant on her mobile telephone as she was on her way home and intercepted her at a bus stop. The respondent is alleged to have confronted the complainant who was adamant that the love affair had ended. As a result the respondent is alleged to have grabbed the complainant and tried to force her to drink the sulphuric acid which respondent had put in a small container, but was overpowered by the complainant. The respondent is alleged to have poured the sulphuric acid on complainants face and all over the body causing severe burns after which the respondent fled. The complainant is said to have been rescued by one Tichaona Bakasa and was rushed to hospital where she is currently battling for her life at the Parirenyatwa's Intensive Care Unit in Harare. The respondent was arrested four days later on 13 May 2015.

Attached to the form 242 and the annexure of the allegations is an affidavit by the Investigating Office Detective Assistant Inspector (D/Ass Insp) Winnie Chamboko's affidavit who took over the matter on 14 May 2015 and opposed the granting of bail on the following grounds;

- i). that the respondent is resident in Botswana where he is employed and can abscond to that country to avoid trial.
- ii). that the respondent may abscond as he is facing a very serious offence which attracts a lengthy custodial sentence.
- iii). that the respondent fled after committing the offence and was only arrested after a follow up by the police.
- iv). that the complainants condition is critical and can deteriorate further and therefore the need to keep respondent in custody while the complainant's condition is monitored.
- v). that the respondents is likely to interfere with state witnesses who are known to him.

The respondent who is 57 years old in his bail application filed on 5 June 2015 gave his residential address as No. 7904 Natview Mutare where he said he resides with his four children.

The respondent indicated that he is employed as a mechanic operating from Mutare and partly in Botswana. The respondent denied the state's version of events and briefly gave his side of the story as follows.

The respondent said on the fateful day he came to Harare and got the sulphuric acid for personal use and that on his way back to Mutare he decided to pass through Goromonzi to see his lover the complainant. He denied smuggling the sulphuric acid from Botswana. The respondent said he contacted the complainant and they met but ended up arguing over complainant's infidelity. The respondent said he had told the complainant that the container he had had sulphuric acid and that when he briefly left it to relieve himself the complainant decided to drink the acid. He said in a bid to restrain the complainant the sulphuric acid was spilled all over the complainant's body. He denies that he poured the sulphuric acid on to complainant's body but that complainant wanted to commit suicide. The respondent said he only left the scene after people who had gathered threatened him. He said he was arrested at Parirenyatwa hospital where he wanted to visit the complainant.

The respondent submitted that he is a good candidate for bail and that the administration of justice would not be compromised if he is admitted to bail. He responded to the grounds raised by the investigating officer as follows:

- a) that he is generally employed in Mutare where he owns a house and has a family although he has business interest in Botswana.
- b) that he is willing to surrender his valid passport and confine himself in Mutare until the matter is finalized.
- c) that he is not likely to abscond as he has a good defence to the charge and that the state case is very weak.
- d) that he did not abscond after the alleged commission of the offence but was arrested after he tried to visit the complainant in hospital hence he is not at flight risk.
- e) that he would not interfere with any witnesses including the complainant.

The state through Mr *Muringani* did not oppose the admission to bail of the respondent as per the bail response filed on 10 June 2015. This informed the consent order which I have earlier on referred to which I granted on 11 June 2015.

Apparently the respondent was not released from prison as per the order I granted as he was not able to surrender his passport to the clerk of court Marondera as it was in the custody of the Police. This only became apparent during the hearing of this application.

On 12 June 2015 the state through Mr *Mugabe* made an application for the revocation of bail and issuance of a warrant of arrest in terms of s 126(1) and (2) of the Criminal Procedure and Evidence Act [*Chapter 9:23*]. The state submitted that it had consented to bail without verifying certain facts with the investigating officer and that Mr *Muringani* who had consented to bail had not sought authority from his superiors. I should hasten to point out that I am not aware of any law which requires a prosecutor to seek authority before consenting to bail. In the main the state submitted that there are new facts which if they had been brought to the attention of the court the respondent would not have been admitted to bail. The new facts are listed as follows:

- i) that the respondent's business address in Botswana was not verified :- . It is not clear why this had to be verified as the respondent had given an undertaking to stay in Mutare.
- ii) that the respondent tried to visit the complainant at Parirenyatwa ICU to finish her off when he was arrested :- . It is not explained how respondent tried to do that and the investigating officer who later testified clearly stated that it is the Police who lured the respondent to Parirenyatwa in order to arrest him.
- iii) that the complaint is in a critical condition:- . This cannot possibly be a new fact as it is alluded to in the Form 242 and in the affidavit by the investigating officer.
- iv) that the respondent was on the run from 9 May 2015 until his arrest on 13 May 2015:- again this is disclosed in its Form 242 and the investigating officer's affidavit.

In his supporting affidavit, Mr *Mugabe* in seeking the revocation of the respondent's bail repeated the averments I have already alluded to and made additional submissions that the respondent had entered Zimbabwe through an illegal point of entry and therefore would employ the same means to flee from Zimbabwe as this cannot be cured by the surrender of his passport. It is needless to point out that during the hearing both Mr *Mugabe* and the investigating officer were not able to substantiate this allegation which is denied by the respondent. Secondly Mr

Mugabe said the respondent's attempt to finish off the complainant at Parirenyatwa ICU was thwarted. Again this remained a disputed and an unsubstantiated allegation.

In order to do justice to this application one must have regard to the relevant provisions of s 126 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] which are as follows:

“126 Alterations of recognisances or committal of persons on bail to prison

- (i) Any judge or magistrate who has granted bail to a person in terms of this Part may, if he is of the opinion that it is necessary or advisable in the interests of justice that the conditions of the recognisance entered into by that person should be altered or added to or that the person should be committed to prison, order that the said conditions be altered or added to or commit the person to prison as the case might be.

Provided that-

- (i) if the judge or magistrate who granted bail is not available, any other judge or magistrate as the case may be, may act in terms of this subsection.
- (ii) a judge or magistrate shall not act in terms of this subsection unless facts which were not before the judge or magistrate who granted bail are brought to his attention”. (emphasis is my own.)

On 12 June 2015 I issued a warrant of arrest for the respondent in terms of s 126 (2) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] and called upon this respondent to show cause why the bail which I had granted him on 11 June 2015 should not be revoked. I took this route through abundance of caution as I believed that the state may be able to make a good case as provided for in s 126 (1) (ii) of the said Act.

It is clear to my mind that there are no new facts which were not before me when I initially granted the respondent bail. I have already alluded to the facts of this matter in detail and I am not persuaded that it is necessary or advisable in the interests of justice to revoke the respondent's bail. The state has dismally failed to show that there are new facts which warrant such a course of action. Before this court can act in terms of s 126 (1) of [*Chapter 9:07*] there should be new facts in existence which were not brought to the attention of this court. See *Mahata v Chigumira N.O and Amor* 2004 (1) ZLR 88 (H). It is therefore clear that where there are no such new facts this court cannot revoke the respondent's bail. All the facts raised by the State were clearly stated in the annexure to Form 242 and the investigating officer's affidavit when bail was granted by consent. The disquiet by some officials in the Prosecutor General's Office on why bail was granted cannot be construed as new facts.

The application is clearly ill-founded and clearly lacks merit and should be dismissed.

Accordingly, it is ordered that the application for revocation of the respondent's bail be and is hereby dismissed.

National Prosecuting Authority, applicant's legal practitioners
Allen Moyo Attorneys, respondent's legal practitioners