

CHRISTOPHER KUMISAI

versus

THE STATE

HIGH COURT OF ZIMBABWE

BHUNU J

HARARE, 2 February 2016 and 4 March 2016

Assessors: 1. Mr Musengezi
2. Mr Kunaka

Bail Application

S Kachere, for the applicant

C Mutangadura with Mr Kasema, for the State

BHUNU J: The applicant is jointly charged with fraud together with 7 others. They are alleged to have defrauded the Ministry of Finance twice causing a total prejudice of US\$729 345.00. The trial commenced before me on 13 July 2015. It had been progressing well until it was stalled by my recent elevation to the Supreme Court Bench. I have however since directed that the matter be set down for continuation of trial during the 1st term vacation sometime in April 2016.

The applicant is now applying for bail on the basis of changed circumstances in terms of s 116 of the Criminal procedure and Evidence Act [*Chapter. 9:07*]. The main reason why the accused was denied bail in the first place is that he is facing a serious charge and the evidence against him is strong. Upon conviction he is likely to face a stiff penalty. The prospect of a lengthy period of imprisonment is likely to prompt him to abscond thereby prejudicing the ends of justice.

Nothing has changed in respect of the strength of the case against him. If anything there has been a turn for the worse. The evidence of Gedion Misheck Zharu an accomplice witness places him at the centre of the whole criminal enterprise. He is said to have masterminded the procurement of false signatures to facilitate the fraud. This witness positively identified the applicant as the person who hired him to append the fraudulent signatures on the fraudulent documents used to commit the fraud.

The main thrust of the application is medical, it being alleged that the applicant is ill and now bed ridden as his condition continues to deteriorate. Although medical documents have been attached to the application, these are difficult to decipher in the absence of a report from the doctor explaining the applicant's condition in simple laymen's language comprehensible to the court.

From the little that I could decipher from the medical documents, the applicant suffers from an eye cataract which is being attended to by the doctors. Apart from merely stating the procedures they are taking to manage his condition nowhere have the doctors drawn any adverse report against the prison conditions where he resides nor have they recommended that he be released to facilitate treatment.

The onus being on the applicant to convince the court that indeed there have been changed circumstances warranting the granting of bail, it can hardly be said that he has discharged that onus.

In the absence of concrete proof that there have been changed circumstances warranting the release of the applicant on bail, it remains unsafe to release the applicant on bail considering the high risk of abscondment. For that reason the application for bail can only fail.

It is accordingly ordered that the application be and is hereby dismissed.

Kachere Legal Practitioners, applicant's legal practitioners
The Prosecutor General's office, respondent's legal practitioners