

COSTER MANDUNGUDZA
versus
THE STATE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 21 & 22 January 2016

Bail Application

A. Mugiya, for the applicant
A. Muzivi, for the respondent

ZHOU J: The applicant was arrested on allegations of robbery as defined in section 126 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. The allegations against him are that on 23 November 2015 and along Chancellor Avenue, Harare the applicant unlawfully and intentionally used violence or threats of immediate violence on the complainant, Delight Mango, by pointing a firearm at the complainant in order to induce the complainant to relinquish his property, and thereby stole a Samsung Tablet and cash amounting to US\$120-00.

The entitlement of a person who is facing criminal charges to be released on bail is guaranteed by s 50 of the Constitution. It is only when there are compelling reasons which have a bearing on the administration of justice that the court would be entitled to deprive a person who has not been convicted of his liberty. The presumption of innocence operates in favour of the applicant at this stage of the proceedings.

The charge involves a very serious offence. Given his position of a police officer, the applicant is likely to be sentenced to a long term of imprisonment if he is convicted. While the seriousness of an offence alone is not always sufficient to warrant a denial of bail, this case contains certain features which render the case against the applicant very strong. It was committed in broad daylight. The use of a firearm was involved as well as the abuse of a police identification card. The complainant would in all probability not fail to identify the applicant. The applicant himself is well aware of those facts, and that awareness is a

sufficient inducement to abscondment. Further, the applicant's motor vehicle was sufficiently identified by its make and registration number. The applicant has not explained why a motor vehicle which was identical to his and bearing the same registration number would be found in the custody of someone who had a police identity card. The suggestion that some other persons may have contrived the registration number of his motor vehicle and put them on a motor vehicle similar to his in order to commit the offence is an attempt to overstretch the imagination of this court. That submission is startling and lacks seriousness.

Mr *Muzivi* for the respondent pointed out that the prosecution has returned the docket for further investigations in respect of identification and the whereabouts of the applicant's alleged accomplices. That development does not justify the admission of the applicant to bail. Given his position, the applicant has a greater chance of jeopardising such further investigations if he is to be released at this stage. The court has also taken note of the fact that besides the fact of the accomplices being at large, the weapon which was used in the robbery has not yet been recovered. The above factors weigh heavily against the release of the applicant.

In the premises, the application for admission to bail pending trial is dismissed.

Mugiya & Macharaga Law Chambers, applicant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners