

SIMBARASHE CHIKAMHI
versus
THE STATE

HIGH COURT OF ZIMBABWE
NDEWERE J
HARARE, 28 February 2018

Bail application

R Masinire, for the applicant
M Manhamo, for the respondent

NDEWERE J: The applicant was jointly charged with Gerald Kamenya and his sister Plaxedes Chikamhi. The State alleges that on 8 February 2018 and at around 1030 hours detectives from Harare Minerals received information to the effect that the accused persons were in possession of a live pangolin and were looking for a buyer at Chisipite Shopping Centre. Upon arrival at the shopping centre, the police detectives observed a blue Honda Fit registration number ABH 1475 parked, all three accused persons were inside. The applicant was the driver. The applicant and the 2nd accused got out of the vehicle and the applicant opened the boot and held a white sack whilst accused 2 watched. The two entered the vehicle and drove to Bon Marche where the detectives were also parked.

The detectives approached the vehicle while the three accused were seated in the car. The detectives introduced themselves but before they could explain their mission the 1st accused (applicant) started the car and was about to drive off when one detective jumped into the applicant's car through the front passenger door and the car sped off. The detective was ordering the applicant to stop but instead, the applicant jumped out of the moving vehicle. The applicant and his accomplices tried to escape but the detectives managed to chase the three accused persons with the assistance of members of the public and were able to apprehend them. These were the facts outlined by the respondent.

The applicant applied for bail pending trial on the following terms contained in the draft order

- (i) that he deposits \$50 with the Clerk of Court at Rotten Row Magistrates Court, Harare.
- (ii) that he continues to reside at 2501 4th Street, Chesvingo Township Masvingo.
- (iii) that applicant is not to interfere with witnesses.
- (iv) that applicant is to report every Friday at Masvingo Central Police Station.

The applicant in his statement averred that on 8 February 2018 he was hired by a certain Donald Moyo, his regular client in Masvingo. When the applicant arrived at Chisipite he had 2 other passengers who had asked for a lift. According to the applicant he was shocked when they were rounded up by police detectives in plain clothes. Initially the applicant panicked thinking the detectives were robbers and the applicant attempted to flee. The detectives then searched the car and found a pangolin in the boot. The applicant said he was not aware of the presence of a pangolin. The police arrested the three but Donald Moyo bolted and ran away the moment police requested for the boot to be opened. The applicant distanced himself from the pangolin and denied the offence of possessing a pangolin without a licence. He contended that he was a good candidate for bail.

The application for bail was opposed by the State. The reasons for opposing bail were that the applicant is facing a serious charge and there was strong evidence against him. If convicted a mandatory custodial sentence shall be imposed. The State's fears were that if released on bail; because of the seriousness of the offence and the likely lengthy prison term, the applicant was likely to abscond and avoid standing trial.

The court noted that the alleged Donald Moyo, despite being said to be a regular client, had not been found. It also noted that the applicant was the owner of the vehicle and other persons were mere passengers. The court also noted the police assertions that they had observed the applicant for a while and had seen him open the boot in a manner which suggested familiarity with the boot and its contents.

During the application it later came out from the respondent's submissions that the matter was set down for trial on Friday 2nd March 2018. The applicant's legal practitioners later on confirmed that. The applicant's legal practitioner, Mr *Masinire R* of Messrs Masinire and Chakabva Legal Practitioners, confirmed also that he had been served with the charge sheet and the State outline. He said he was ready for trial. The witnesses for the State were police details who were ready for trial as well.

The applicant was applying for bail pending trial. The State, well before the bail application by the applicant, had expeditiously provided the defence with State papers and a

tentative trial date. This court's view is that where the State has provided a trial date as in this case it will be in the interests of both parties that the matter be allowed to proceed to trial while the accused is in custody and that the matter be determined on the merits and finalised.

Accordingly the application for bail is dismissed.

Masinire & Chakabva legal practitioners, applicant's legal practitioners
Prosecutor General's Office, respondent's legal practitioners