

GRANNY CHIRISERI
and
FREEEMAN GADZAMOYO
versus
THE STATE

HIGH COURT OF ZIMBABWE
NDEWERE J
HARARE, 20 December 2017 & 5 May 2018

Bail Application

D. Mthombeni, for the appellants
E. Makoto, for the respondent

NDEWERE J: On 7 December 2017, the appellants applied for bail in the magistrate court and it was denied. The reasons given for denial of bail were that they were facing a serious offence and the evidence against them was overwhelming and a lengthy sentence was likely upon conviction such that if they were released on bail, they would be motivated to abscond from the jurisdiction of the court. The magistrate said when faced with overwhelming evidence of the commission of the offence, the presumption of innocence in favour of the accused is torn apart. The magistrate also referred to the threats to witnesses as testified to by the investigating officer in his affidavit.

The appellants noted an appeal against the refusal of bail on 15 December, 2017. The grounds of appeal were that the allegations of likelihood to abscond and of there being strong evidence against the appellants were bald assertions without any evidence to support them. They said there was no evidence that the appellants were a flight risk and there was no evidence that the case against them was very strong since investigations were still continuing. They said the court erred in refusing the appellants bail because they were facing a serious offence and that the likely sentence will be lengthy if convicted. They also said the court erred in ignoring the fact that both appellants co-operated fully with the police, voluntarily presenting themselves to the police on several occasions and proceeding to court from home on two occasions before

they were placed on remand. On 20 December, 2017, during the bail hearing, the appellants made submissions in support of their grounds of appeal.

The State opposed the appeal against the refusal of bail. It said the magistrate did not misdirect himself/herself in any way because it was not disputed that there were threats to witnesses over the mobile phones and the most likely inference was that the threats were linked to the appellants' offences. In addition, the charge was serious and the facts were that the appellants who were mere domestic workers had acquired several stands and property within the same period that the complainant's \$150 000-00 was stolen. So indeed if convicted, because of the large amount of money involved, a lengthy custodial sentence was likely. It was also submitted that there was evidence linking the appellants to the offence.

The State submitted that given the above facts, the magistrate did not misdirect herself in any way when he refused bail pending trial.

The State also pointed out that the magistrate had the privilege of hearing the oral evidence of the investigating officer and his cross examination whereas the appeal court was restricted to the appeal record only, without the advantage of oral evidence.

At the end of the hearing on 20 December, 2017, I dismissed the appeal against the refusal of bail in court and gave a summary of my reasons.

The appellants wrote to the Registrar, on 19 February, 2018 requesting a written judgment, hence this written ruling.

As correctly pointed out by the State in its submissions the appeal court is confined to the record of proceedings only, it does not have the advantage of listening to viva voce evidence and observe witness demeanour and credibility. For those reasons, an appeal court can only interfere with the decision of the court *a quo* if there is a misdirection by the court *a quo*. I did not see any misdirection in the magistrate's decision. She considered the interference with witnesses, the seriousness of the offence, the overwhelming evidence and the likely lengthy sentence and concluded that, cumulatively, these were factors which would induce the appellants to abscond from the court's jurisdiction. She concluded that the above were compelling reasons to refuse bail. As already indicated above, there was no misdirection in the magistrate's reasoning and decision. I therefore had no legal basis to interfere with the decision she made. I accordingly dismissed the appeal against refusal of bail pending trial.