

LAMECK KAROMBO
versus
THE SATE

HIGH COURT OF ZIMBABWE
WAMAMBO J
HARARE, 14 December 2018 & 18 January 2019

Bail Application

J Sikhala, for the applicant
T Mapfuwa, for the respondent

WAMAMBO J: The applicant applied for bail before a magistrate sitting at Chinhoyi. He faces two counts of thefts as defined in s 113 (1) of the Criminal Law (Codification and Reform Act) [*Chapter 9:23*].

The State outline reflects the following:

The first count involves theft of US\$90 000. The applicant at the relevant time was a serving police officer with the rank of Sergeant and stationed at ZRP, Mashonaland West Provincial Headquarters Finance Section, Chinhoyi. Amongst his work duties was that of originating payments of services for the Zimbabwe Republic Police through the pay net system which requires the originator to log in using his username and password. Among other funds US\$87 000 was transferred to ZRP Mashonaland West for payment of allowances to ZRP members deployed on voter registration duties. On 21 December 2017 applicant logged into the payment system. He unlawfully used usernames and passwords of two authorised persons and transferred US\$90 000 into his own account. He thereafter deleted the unlawful transaction from the system. The US\$90 000 has not been recovered.

On the second count the State outline reflects as follows: On 3 January 2018 applicant's bank account was not funded. Knowing that his account had no money applicant withdrew

US\$14 379.57 money not due to him and converted it to his own use. The US\$14 379.57 was not recovered.

The magistrate heard the bail application and dismissed the application.

The reasons for dismissing the application are encapsulated in a bail ruling which is attached to the application before me. I assume that the facts as stated accord with the evidence given. A full record with the testimonies and submissions would have been ideal, however. This was brought to the attention of counsel during the hearing.

The magistrate relied on s 50 (1) (d), of the Constitution which states as follows:

“(1) Any person who is arrested ----

(d) must be released, unconditionally or on reasonable conditions, pending a charge or trial unless there are compelling reasons justifying their continued detention and---”

The magistrate summarised the State evidence given by Detective Samuel Gono as follows: Applicant immediately after committing the offence fled and was at large until his arrest on 4 December 2018 at Hollies Hotel in Harare. Before he went continual checks were being done by the police at applicant’s home but the efforts were in vain. It was also testified to that upon his arrest applicant attempted to escape from the ditches of the police.

The state submitted that if granted bail there is a risk that applicant may abscond, and may also interfere with witnesses as he is well connected to other police officers who are to later testify against him in this case.

The magistrate also summarised defence counsel’s submissions as follows:-

Bail is a constitutional right. There is no evidence linking applicant to allegations of absconding and if applicant was, found to be a flight risk his travel documents could be lawfully withheld.

The magistrate clearly articulated the law relating to bail applications and the fact that a denial of bail can only arise if there are compelling reasons justifying that that person should continue being in detention.

The magistrate was satisfied that the evidence led pointing to the risk of applicant absconding was satisfactory.

In the circumstances where applicant is said to have attempted to escape from the police, after his arrest, this finding finds favour with me.

Coupled with the broad circumstances of the planning and deceit that went into the commission of the offences, particularly the first count, applicant emerges as a weak candidate for the granting of bail.

It also comes out that applicant fled from his home after committing the offence/s.

The allegations in the second count could have come out more clearer. Defence counsel before me sought to convince me that the money in the second count was actually a loan advanced to the applicant. The state did not quite agree but did not explain how the amount got into appellant's account either.

Be that as it may the first count involves a police officer who allegedly stole a substantial amount at and through his official duties under the ZRP.

A second count was committed about 13 days after the first count. Both counts involve theft of money, which I should say is not unsubstantial.

In the circumstances I find that the circumstances militate against the granting of bail. The findings by the magistrate seem to agree with the evidence presented before him/her. I find that for the reasons given by the magistrate, that there are compelling reasons justifying applicant's continued detention. To that end I make the following order:

The application is dismissed.

Koto and Company, appellant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners