Judgment No. HB 142/2002
Case No. HCB 196/2002

JOSEPH MANGENA

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 25 NOVEMBER & 12 DECEMBER 2002

Mrs C Nleya for the applicant
Mrs I M Nyoni for the respondent

Bail Application pending Trial

CHEDA J: Applicant applies for bail pending trial against a charge of armed robbery.

The brief facts as outlined by the respondent are that on 21 October 2002 applicant in the company of 4 others committed a number of robberies around the city of Bulawayo. Applicant and 3 others were seen driving a BMW motor vehicle as they were assisting one Paul Tapera who has since died as a result of a shoot out with the police in one of the armed robberies.

The respondent through *Mrs Nyoni* opposed the granting of bail on the basis that applicant is facing serious and several counts of armed robberies and if released on bail he is likely to commit further offences.

Mrs Nleya for applicant argued that:

1. Having regard to the facts of the matter the respondent has not clearly indicated how many counts of armed robbery the applicant is said to have committed.
2. The identification of the applicant is in doubt as no identity parade was ever carried out, he was merely arrested because he was found in the company of one Sidingumuzi who the police were looking for but is not charged with the applicant.
3. There is no basis on the facts of the matter, for the investigating office's contention that the applicant will commit further offences if released on bail.

4. Applicant is a *bona fide* citizen of Zimbabwe, married with two children and owns house 70269/2 New Lobengula, the property at which he resides.
5. The applicant is a holder of a Zimbabwean passport and if need be, is willing to surrender it as part of his bail recognisance.
6. If need be, the applicant is able to report at Njube Police Station while on bail at such intervals as the honourable court deems appropriate.
7. The applicant is able to deposit an amount of $20 000 as his bail recognisance.

It is trite law that an accused is presumed innocent until proven guilty by a competent court. That presumption should, in my view, not be easily interfered with unless it can clearly be shown that it is in the interest of the proper administration of justice to deprive accused of his liberty. In other words the denial of bail is not mandatory but discretionary. Section 116(7) (C) of the Criminal Procedure and Evidence Act [Chapter 9:07] reads …

> "(7) Subject to subsection (4) of section 13 of the constitution, in any case in which the judge or magistrate has power to admit the accused person to bail, he may refuse to admit such person to bail if he considers it likely, that if such person were admitted to bail he would –
> (a) …
> (b) …
> (c) Commit an offence;
>
> But nothing in this section shall be construed as limiting in any way the power of the judge or magistrate to refuse to admit an accused person to bail for any reason which to him seems good and sufficient."

In *A-G* v *Watson Gibson Kamoda & 2 Others* HH-200-90 accused who were facing three counts of theft of motor vehicles were refused bail on the ground that if granted bail they were likely to commit further offences.

Applicant, it is alleged is facing a number of similar offences and seems to be operating as a syndicate and one of them has since been involved in a shoot out with the police which resulted in his death. It is common cause that of late there has been an increase in the number of armed robberies where large amounts of money and

valuable properties have been lost. This, of course, is no way being attributed to the applicant but however, it is a fact which can not be ignored and unfortunately applicant happens to be linked to some of the said robberies. It is in both his interest and that of the proper administration of justice that his name be cleared through the due process of law and to do anything which has a tendency of interfering with that administration will be in my view a miscarriage of justice. There is indeed a need to balance the interests of justice against those of an individual. See *Aitken and Another* v *A-G* 1992(1) ZLR 249.

The fact that applicant is linked to various armed robbery cases clearly puts him within the ambit of a person who has the propensity of committing further crimes. In order for this ground to be used, it must relate to the commission of certain or particular crimes which crimes are harmful to public safety.

The allegations applicant is facing are very serious although the seriousness of an offence on its own is not justification for refusal of bail pending trial. In the present case it is the seriousness of the offences applicant is facing, the harm to public safety posed by such crimes and his propensity of committing armed robberies that his application for bail should be so considered. The above taken in totality can easily result in him absconding and hence failing to stand trial.

Having taken into account all the relevant factors as submitted by both counsel I find that applicant is certainly not a candidate for bail and accordingly bail is refused.

Mabhikwa, Hikwa & Nyathi legal Practitioners applicant's legal practitioners
Attorney-General's Office respondent's legal practitioners