

THUBALIKHONA NCUBE

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 27 SEPTEMBER 2006 AND 9 NOVEMBER 2006

Mr G. Nyoni for the applicant
Ms Wozhele for the respondent

Bail pending Trial

CHEDA J: This is an application for bail pending trial.

Applicant first filed his application for bail pending trial on the 19th day of June 2006, which was heard on the 6th July 2006 and was dismissed.

On the 4th August 2006, this application was filed.

The brief facts of this matter are that applicant together with one Dumisani Ndlovu are alleged to have used a firearm to rob two people of their motor vehicle on the 2nd day of April 2006. He was shot during the arrest and a bullet is still lodged in his leg.

I dismissed the initial application on the basis that applicant had a South African passport and is therefore a foreigner. I felt that on the basis of these facts the granting of bail in those circumstances would have compromised the proper administration of justice, as applicant was unlikely to stand trial.

In the present application it is confirmed that he is indeed a South African citizen. He however, submits through his defence counsel that despite his citizenship status he

should be granted bail with stringent conditions in order to ensure his attendance at the trial.

The principle of bringing a bail application to the same court is usually premised on the basis that there are changed circumstances.

In casu, applicant has sought to clarify the point that he indeed has only one passport, that is, a South African and not a Zimbabwean one. He further went on to submit that his family is in South Africa. It is also his submission that there is a need for him to be released on bail in order for him to receive medical attention in South Africa for the removal of a bullet in his leg.

The changed circumstances in a second or subsequent bail application should be such that they lessen applicant's risk in his possible failure to stand trial. In other words the changed circumstances should be in his favour.

However, in casu the changed circumstances are nowhere near his favour in that if anything they buttress respondent's case in that applicant has no financial or family interest in Zimbabwe and therefore in my view, he will have no reason to remain in this country to face such serious allegations.

If admitted to bail he is likely to abscond. The fact that he holds a South African citizenship is not per se enough reason to deny him bail but other factors must be factored in, such as the seriousness of the offence and of course the circumstances surrounding the commission of the offence and his arrest, these factors are inexhaustive.

Of concern to me is the fact that he has not properly received medical attention to his bullet lodged leg. No reasonable explanation has been given by respondent as to the prison authorities' failure to attend to him.

This type of conduct on the part of the prison authorities is unacceptable. Medical treatment is a fundamental human right which every human being is entitled to, that is why even in battle zones captured prisoners receive basic medical attention.

Prison authorities are therefore ordered to attend to applicant without further delay.

In conclusion applicant is not a suitable candidate for bail and his application is accordingly dismissed.