SIMPLICITY NDLOVU

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
BERE J
BULAWAYO 10 AND 19 JULY 2007

Sibanda for the applicant
W Mabhaudi, for the respondent

Bail Application

BERE J: Applicant is charged with one count of robbery and another of armed robbery – he is an ex-Zimbabwe National Army soldier. Applicant has been in remand since 6 March 2007. It would seem applicant is jointly charged with other accused persons who have since been released on bail.

Initially the prosecution was vehemently opposed to bail but they has since had a change of attitude. The prosecution now concedes to bail on condition that applicant is granted stringent bail conditions.

There is no doubt in my mind that the allegations faced by applicant are serious by any standard. To compound applicant's position he has admitted his previous conviction of theft from a motor vehicle which led to him being incarcerated for 48 months. What is clear from applicant's previous conviction and his pending two cases is that the accused does not seem to impress as a suitable candidate for bail despite the concession made by the prosecution.

The granting of bail to a suspect calls for a delicate balance between the liberty of the accused who has the presumption of innocence operating in his favour and the interests of the macro-society which demands that an accused should be able to stand trial or avail himself for trial when he is so required.

Where there is the slightest indication that applicant's release on bail might prejudice the interest of justice the court must not opt for that route.

In this regard, I lean on the views of GUBBAY CJ as he then was in one of the much celebrated bail cases in Zimbabwe – The *Attorney-General* v *Aitken and Another* 1992 (1) ZLR 249 @ 253C when he noted *inter alia* as follows:

> "… The ends of justice would not be served if there were some cognizable indications that the accused would not abide by the conditions of the bail recognisance."

Practice has shown that in some bad cases, stringent bail conditions may be sufficient to allay the court's fears of the possibility of the accused compromising the

ends of justice by failing to avail himself for trial. I must however, add caution and say this obviously well informed and rich practice is not full proof that guarantees a determined accused from avoiding trial if he chooses to.

Our country's borders are so porous that one can almost move in and out of the country without detection, if one were to exit through unrecognised points scattered all over our borders.

It is recognised that the state assumes its *dominus litis* status in criminal related matters and it must therefore be in extremely rare situations where the court would go against representations made by the prosecution. I am satisfied beyond doubt that this is one such case where the court is satisfied that the concessions made by the prosecution were not well made.

By his own admission, applicant has a previous conviction, the prosecution has conceded hat the evidence available is such that it would sustain a conviction against the accused person. Appellant is not an unsophisticated or simple villager but

an ex-soldier in the Zimbabwe National Army. If convicted the applicant is likely to be imprisoned for a fairly long period of time.

Putting all these into consideration one cannot avoid coming to the inevitable conclusion that applicant has every reason to prejudice the interests of justice if he is granted bail.

The court is thus constrained in granting applicant bail despite the concession made by the prosecution and the firm assurances made by applicant's counsel. It would be too risky to grant this applicant bail.

Accordingly, the application for bail is dismissed.

Cheda & Partners, applicant's legal practitioners
Attorney-General, respondent's legal practitioners