

CHRISPEN TSHUMA

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 7 FEBRUARY 2009

T Sibanda for the applicant
W B Dube for the respondent

Bail Application

NDOU J: The applicant is jointly charged with one Witness Nyathi and Nicholas Sibanda on five counts of armed robbery which offences are alleged to have occurred between 2006 and 2007. The state consented to bail in respect of the two other accused persons and opposed in respect of the applicant. The respondent filed an affidavit of Detective Albert Zhou in support of its opposition of bail. The applicant has referred me to records in which his co-accused were granted bail. I have gone through both records i.e. *Nicholas Sibanda v State* HCB-109-07 and *Witness Nyathi v State* HCB-163-07. In both, the state, as alluded to above, consented to bail. The allegations are primarily similar in all the three charges save for one allegation in Detective Zhou's affidavit. This sole allegation distinguishes the position of the applicant from his co-accused. It seems to me that it is solely on this fact that bail was opposed. Even on the respondent's grounds for the opposition this is sole ground that applicant may abscond. So the opposition is based on abscondment. Detective Zhou said that when the accused was arrested "he tried to escape which means if granted bail he can abscond." Further, the detective alleges that the applicant is of no fixed abode as he "neither has a house or family." He is said to be accommodated by some of the state witnesses. It is on this basis that bail is opposed. This attempt to run away from the police is a factor that works against the applicant. Already the charges of armed robbery are serious. Evasion of arrest by someone facing such serious charges is relevant factor in bail applications – *S v Hudson* 1980(4) SA 145 and *S v Ndlovu* 2001(2) ZLR 261 (H). In terms of section 116(7) of the Criminal Procedure and Evidence Act (Chapter 9:07) I have a discretion to refuse bail if I consider it likely that the accused person would not stand trial.

In casu, I am convinced that because the applicant attempted to evade arrest, if admitted to bail he will abscond. Accordingly, on account of the risk of abscondment, the applicant's application must fail and applicant is refused bail pending trial.

Cheda & Partners, applicant's legal practitioners

Criminal Division, Attorney General's Office, respondent's legal practitioners