

VITALIS SHAMBIRA

VERSUS

THE STATE

IN THE HIGH COURT OF ZIMBABWE

CHEDA J

BULAWAYO 15 JANUARY 2010 AND 20 JANUARY 2010

Mr L. Mcijo for the applicant

Mr. T. Hove for the respondent

Bail pending trial

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

Applicant is a member of the Zimbabwe National Army based in Plumtree. The brief allegations against him are that he is facing two charges firstly, that he wrote a threatening letter to a Magistrate who was presiding over a case involving his colleagues who are facing charges of attempted murder and discharging a fire arm in public. The second charge is that he attempted to kidnap complainant's daughter when she was at school.

Applicant now applies for bail on the basis that he will not abscond and will not endanger the safety of the public.

Respondent is opposing bail on three grounds namely:-

- 1) abscondment
- 2) public safety, and
- 3) interference with State witnesses

These courts' stance towards the granting of bail to suspects is that they should lean in favour of the liberty of suspects unless there are convincing reasons which clearly indicate that the granting of bail is not suitable in the circumstances.

It has been argued by respondent that applicant is likely to abscond. Even if this is a possibility, in some instances this can be effectively taken care of by the imposition of strict bail conditions to prevent his possible abscondment.

That leaves me with the task of exploring the other two grounds for their opposition. It is trite that where possible a suspect should not be deprived of his liberty unless his release will and not "may" interfere with the due process of law and crime control. In the present case applicant has positively shown his desire to interfere with both due process and crime control.

Applicant has threatened a Magistrate with death and also attempted to kidnap his daughter. This, to me is a serious threat to public safety. A person who threatens another with death is a potential danger to society in general and to the individual in particular. Applicant's position is exacerbated by the fact that the threat was directed at the officer who is charged with dispensing justice. This type of conduct runs contrary to the independence of the judiciary, in that a judiciary officer's oath of office to dispense justice without fear of favour is highly compromised. A judiciary officer's exercise of a judicial function should never be interfered with, by anybody at all.

What applicant did is unlawful and goes to demonstrate that he is a danger to the proper administration of justice. In view of his determination to frustrate the smooth running of the wheels of justice, he is not a person who should be liberated pending trial.

Judgment No. HB 04/10
Case No. HCB 159/09

Anyone, who has the nerve to take such a bold step to interfere with the maintenance of law and order in the manner described above should not be granted liberty as this will defeat the course of justice.

Any person who unlawfully interferes with the Police, prison officers, public prosecutors, judiciary officers or any other officer charged with the proper administration of justice should be deprived of his liberty pending trial.

In view of the above, I seriously believe that there is reason to apprehend that if he is released the magistrate, the child and all other officers whom he perceives as a stumbling block in the release of his colleagues will be interfered with, see *Exparte Nkete* 1937 EDC 231.

In light of the above applicant is denied bail.

Lazarus and Sarif, applicant's legal practitioners
Criminal Division. Attorney General's Office, respondent's legal practitioners.