BEKEZELA LIZILE MOYO   **APPLICANT**

AND

THE STATE   **RESPONDENT**

IN THE HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 17 AUGUST 2010 AND 19 AUGUST 2010

Mr. S. Mazibisa for applicant
Miss N. Ndlovu for respondent

Bail Application

     MATHONSI J: The Applicant and three others, namely Bongani Sicelo Mbambo, Everton

Khupe and Mandlenkosi Gumisayi are facing a charge of aggravated armed robbery in violation

of Section 126 of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. He was

arrested at a house in Avondale Mews Harare on the 15th May 2010.

     Prior to the Applicant's arrest investigators had arrested his colleague who is now jointly

charged with him, Bongani Sicelo Mbambo at a house in Malbereign, Harare. It is Mbambo

who led the police to where the accused was.

     After the Applicant and Mbambo were arrested, they were interrogated by the police

and they directed them to Sloane Lodge in Harare where the other two co-accused namely

Everton Khupe and Mandlenkosi Gumisayi had been booked after their arrival from South

Africa where they were based.

Further instigations by the police established that finger prints uplifted from the scene of the crime at Welt Hunger Hilfe No. 6 Wallasey Street, Donnington, Bulawayo, matched those of one of the accused persons Everton Khupe who had been arrested at Sloane Lodge Harare after being fingered by the Applicant and Mbambo. In addition Khupe and Gumisayi were positively identified by the complainants in a formal identification parade conducted by the police. These two, Khupe and Gumisayi could not have been known as the police had no leads on them had it not been for the confessions of the Applicant and Mbambo.

Historically, the circumstances are that on the 27th March 2010 at 10:11 hours, the complainant received a call on his mobile phone from mobile phone number 0912 861 368. The caller enquired as to when the complainant was coming to the office as that caller was waiting for the complainant in the office. The caller was advised that the complainant would be coming in due course.

When the complainant arrived at the office the caller in question was not there but at 11:40 hours the offices were raided by robbers who specifically demanded to be shown 2 safes of the company from where they took away cash and other valuables. This suggested that they were aware of the existence of those safes.

The call that was made to the complainant was later traced to Applicant's mobile phone number 0912 861 368 resulting in the Applicant being a prime suspect. When the Applicant was finally traced and arrested in Harare where he had relocated to presumably after the offence had been committed, he was still in contact with Mbambo, another Bulawayo based individual who had also relocated to Harare. With the combined assistance of the Applicant

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and Mbambo the police were able to arrest Khupe and Gumisayi, the two who are believed to have carried out the robbery.

Indications made by the Applicant and Mbambo led to the recovery of some of the items stolen from the scene of the crime, that is, a cordless handset recovered at a bush in Selbourne Park along Cecil Avenue, Bulawayo. Mbambo led the police to the recovery of a Mazda 323 vehicle which had been used as a gateaway vehicle.

Ms Ndlovu, for the State has submitted that investigations have been completed and the docket submitted to the relevant Attorney General's office for set down although there has been delays in doing so.

Mr Mazibisa representing the Applicant has strongly argued that the confession and/or indications made by the Applicant were obtained through torture. He relied on a medical report dated 21 May 2010 submitted to his firm by Dr. A. M. Dube, the Regional Prison Medical Officer who examined the Applicant on the 20th May 2010. The doctor observed some injuries on the Applicant and that he was having difficulties in walking and he concluded that it was "a case of severe soft tissue injury due to assault."

Prima facie, therefore the Applicant may have been assaulted. However this Court is not presently sitting to determine the admissibility or otherwise of the evidence that may be led by the State. The present inquiry is limited to the fundamental principle of upholding the interests of justice. Taking into account the factors contained in Section 117 of the Criminal Procedure and Evidence Act, [Chapter 9:07], the Court must endeavour to strike a balance between the protection of the liberty of the individual and the administration of justice.

The administration of justice may be prejudiced if the accused person does not stand trial, commits other offences while on bail or interferes with witnesses. The usual barometer to determine the probability of abscondment is where, owing to the strength of the evidence standing against him, the accused person is likely to abscond. *S v Malunjwa* HB 34/03.

In assessing the risk of abscondment the Court is guided by the character of the charges and the gravity of the sentence the accused may face if convicted see *S v Jongwe* 2002 (2) ZLR 209(S).

In the present case the evidence against the Applicant is very strong. He was arrested in Harare almost two months after the commission of the offence and he appears to had relocated to evade justice. His two other accomplices must have relocated to South Africa after the offence where they have residences there and it was probably fortuitous that they were cornered at a lodge in Harare.

The offence of armed robbery is very serious and if convicted the Applicant is likely to be incarcerated for a very long time.   Therein lies the risk of absondment. In any event, investigations are complete and the Applicant should be agitating for his trial date to enable him to prove his innocence.

For these reasons the application for bail is dismissed.

Messrs Cheda and Partners, applicant's legal practitioners
Criminal Division, Attorney General's Office, respondent's legal practitioners