

LYLE SMITH

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 11 & 14 JULY 2022

Bail Application

T. Runganga for the applicant
K. M. Guvheya for the respondent

MAKONESE J: This is an application for bail pending trial. The state is opposed to the application on the grounds that the applicant is a flight risk in that he fled to Tanzania and was extradited to Zimbabwe to face trial. Applicant faces fraud charges in contravention of the Criminal Law Codification Act (Chapter 9:23). It is alleged that on 19th October 2020 applicant obtained from the complainant a sum of US\$335 000 by means of misrepresentation. Applicant misled the complainant into believing that he could secure mining equipment for the complainant. After receiving the money applicant vanished and subsequently left Zimbabwe. Applicant was arrested in Tanzania and extradited to Zimbabwe.

Applicant appeared before a magistrate sitting at Bulawayo on the 10th of June 2022. Applicant launched an application for bail pending his trial. However, before the court made its ruling, applicant had filed this application before this court. I directed that the matter at the Magistrates' Court be finalized before this court could entertain a fresh application for bail. I must indicate that it is improper for an applicant to file two bail applications in two different courts at the same time. On 5th July 2022 the parties appeared before me in chambers and I was verbally advised that the bail application in the Magistrates' Court had been withdrawn. I insisted on the record of the Magistrates' Court being filed in this court. This has since been done. I further directed that it was necessary to secure the evidence of the complainant to confirm whether he was indeed withdrawing his complaint in this matter. I further directed that the Investigating Officer Detective Sergeant Kachitsa be called to give oral evidence on his attitude towards bail. On the 11th July the bail application was

eventually heard. The complainant, Juan Duplessis, confirmed that he was withdrawing the complaint for the following reasons:

“The accused person’s parents are known to me. We live in the same neighbourhood and interact regularly. In the course of our interactions, I have realized how the accused’s actions and the current circumstances have impacted on the well-being of his parents, especially the mother, who has not been feeling well for sometime now. It has also dawned on me that the accused person has already been punished for the period he has been in custody since his arrest. It is therefore, my desire to have the matter withdrawn.”

The complainant maintained his position when called to testify. He stated that no one influenced or induced him to make the statement. The court had the chance to assess the witness and it appeared that complainant was genuine in his desire to drop the charges. I did not find anything unusual about his attitude towards the case. He gave his evidence well. The Investigating Officer admitted that the complainant was the sole and key witness for the state. He expressed disappointment at the fact that a lot of effort had been spent in arresting and extraditing the applicant. During the proceedings, the state sought to place before the court the historical background leading to applicant’s arrest. I declined to hear such evidence and indicted that my ruling was simply based on the merits of the application for bail before me. In this matter the relevant factors are to decide whether the applicant is a suitable candidate for bail in light of the fact that complainant is no longer interested in the matter proceeding, and whether the interests of justice would be compromised.

In terms of s50 of the Constitution of Zimbabwe (Amend. No.20) 2013, an accused may only be denied bail pending trial if there are compelling reasons why an accused must be denied bail. See *Makone v The State* HH-93-07, where the court held that the golden thread running through these principles is that bail should be allowed in the interests of individual liberty unless it is not in the interests of justice do so.

The state’s contention as that inspite of the withdrawal statement by the complainant, he remains a competent and compellable witness in this matter. The state argues that the applicant is still not a suitable candidate for bail. I take a different view. Where the complainant who is the sole key witness for the state indicates under oath that he no longer wishes to press ahead with the charges, this certainly amounts to changed circumstances. There is no compelling reason to deny the applicant bail at this stage. If the state intends to proceed with the prosecution of the matter they can still do so. It is in the interests of justice

and sound criminal justice system administration that accused persons who deserve bail be granted bail. I am satisfied that the scales have been tilted in favour of the applicant by the attitude of the complainant in this matter. There is no basis for the continued detention of the applicant.

In the result of the following order is made:

1. Applicant be and is hereby admitted to bail pending trial.
2. The applicant shall deposit the sum of RTGS\$30 000 with the Registrar, High Court.
3. Applicant is ordered to reside at house number 3 Wordsworth Street, Barham Green, Bulawayo.
4. Applicant is ordered not to interfere with state witnesses.
5. Applicant shall report to Bulawayo Central Police (CID) twice every fortnight on Fridays between the hours of 06:00 am and 6:00 pm.

Tanaka Law Chambers, applicant's legal practitioners
National Prosecuting Authority, state's legal practitioners