

TAFIRENYIKA MANGA
versus
THE STATE

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 17 December 2010 and 29 December 2010

Mr *Nyika*, for the applicant
Mr *Murewanhema*, for the respondent

BHUNU J: The applicant is incarcerated in remand prison on allegations of fraud as defined in s 136 of the Criminal Law Codification and Reform Act [*Cap 9:23*]. He is alleged to have fraudulently converted to his own use 30 tones of fertilizer valued at US\$16 200.00 which he had been contracted to transport.

He was denied bail by a magistrate on the basis that he is a high flight risk. The state alleges that the offence was committed in December 2009. Since then he has been on the run evading arrest until his recent arrest in November 2010 in response it was submitted on his behalf that all along he was not aware that the police were looking for him.

In determining the application for bail the presiding magistrate took into account that the right to liberty was a fundamental human right. He observed that in the absence of compelling reasons the courts always lean in favour of the enjoyment of the right to liberty rather than its extinction. Thereafter he reminded himself of the presumption of innocence until one is proven guilty. He warned himself of the dangers and undesirability of pre-incarceration pending trial.

The trial magistrate made it crystal clear that he was averse to imprisonment of suspects unless it was absolutely unavoidable in the public interest and the due administration of justice. He was alive to the fact that the accused bore the onus of establishing that his admission to bail will not compromise the ends of justice.

The trial magistrate relied on established precedent in the case of *S v Hussey 1991 (2) ZLR 187 (SC)* which is authority for the proposition that if prior to his arrest an accused person

is shown to have tried to avoid arrest or escape it's a clear sign that he is likely to abscond to avoid standing trial thereby compromising the ends of justice.

The applicant's defence is simply that he instructed one Muchada to transport the fertilizer. Having done that he does not seem to have advised the complainant that he had instructed someone else to transport the fertilizer in question He also appears not to have sought any explanation from Muchada as to why the fertilizer did not reach its destination.

Having properly considered the facts and the law the lower court concluded that the applicant had been trying to avoid arrest since 2009 until he was arrested a year later following his arrest on a different case altogether. It therefore determined that he is a flight risk and denied him bail. The applicant was unable to say why the police were unable to arrest him for a whole year when his identity and colleagues were known. The fact that he was only accounted for after he had been arrested on another charge tends to support the magistrate's fears that the applicant cannot be trusted to stand trial if granted bail. That being the case, I cannot perceive any misdirection or impropriate in the trial court's determination.

The appeal is accordingly dismissed.

Nyika Legal Practitioners, applicant's legal practitioners.
The Attorney General's Office, respondent's legal practitioners.