

WONDER MAHUNI
versus
THE STATE

HIGH COURT OF ZIMBABWE
NDEWERE J
HARARE, 30 September, 2020 & 11 November 2020

Bail Ruling

N Chigoro, for the applicant
N Mhongwa, for the respondent

NDEWERE J: The applicant is Wonder Mahuni a male adult aged 41 years. He is married and has four children. His residential address is given as 16 Munyanyi Street, Rimuka, Kadoma.

The applicant was arrested together with his accomplices on 20 August, 2020 for an armed robbery which occurred on 19 August at 8929 Manyame Park, Chitungwiza. The applicant was identified by witnesses at a formal I.D parade. He also made indications to the police. The applicant is now challenging the I.D parade and the indications. The value of the robbed property is US\$16 000. The value recovered is US\$14 000.

The applicant applied for bail pending trial on 31 August, 2020 together with his co-accused, Respect Mwale. He filed a supplementary bail statement on 22 September, 2020. The state opposed the application. During the hearing on 30 September 2020, the state later conceded that the applicant's co-accused could be granted bail since he had been fulfilling the bail conditions in a previous case.

The state maintained its opposition in respect of the applicant. The state differentiated the applicant's case from that of the co-accused.

The state maintained its opposition of bail because the applicant had an outstanding warrant of arrest in Gokwe CRB 544/20. The applicant said he was not aware that the court had issued him with a warrant of arrest. The state disputed this assertion since the applicant was represented by a legal practitioner when he appeared at Gokwe Magistrates Court. The state

further submitted that the applicant was not a good candidate for bail because the applicant, whilst on bail on the Gokwe Case had ignored the bail conditions in B 1120/20 which required him to stay in Rimuka and report twice a week on Mondays and Fridays at Rimuka Police station. It was noted that he never reported at Rimuka Police Station. He was released on 15 July 2020 after getting bail in B 1120/20 on a charge of armed robbery and was supposed to make his first report on Friday 17 July 2020 but he did not go to the police station. He was to appear at Gokwe Court on 21 July, 2020 in that case on, but he did not turn up and a warrant of arrest was issued against him in CRB 544/20. The applicant's excuse for not reporting was that he was unwell and he visited his doctor on 20 July, 2020. But the court noted that the applicant defaulted court on 17 July, 2020 before he visited the doctor on 20 July, 2020.

The court further noted that the applicant who uses a catheter appears to be abusing his health condition to convince the courts to release him on bail because of his condition; yet when he gets released, he ignores the conditions issued as part of the bail order. In this instance, he tried to mislead the court into believing that he did not abide by the bail conditions in B 1120/20 because he was ill and needed to see a specialist, yet he defaulted before he saw his doctor and no evidence was ever adduced to show that he ever visited a specialist.

The investigating officer's testimony was that the applicant's health condition is known by them as a law enforcement agency, but they have noted that the condition has never deterred him from committing armed robberies. The investigating officer said the applicant commits offences in that condition. The applicant did not dispute the investigating officer's testimony. It is trite law that what is not disputed is accepted as correct.

Since he is known to be living with the health condition which requires use of a catheter, but getting involved in criminal activities despite the condition, he should have adduced evidence to show that his health condition had further deteriorated to such an extent he could not attend court or report at the police station on the given dates. No such evidence was ever produced.

In my view the State has managed to show that there are compelling reasons to deny the applicant bail this time around. The court is required to balance the interests of the administration of justice and those of the accused when considering bail applications. The applicant previously benefited from the court's exercise of discretion in his favour but he has shown that the court

cannot trust him. Releasing him on bail again will jeopardise the interests of justice because the applicant will ignore the bail conditions. He will avoid staying at the given address, ignore reporting conditions and fail to turn up at court for his trial. Investigations were said to be complete by the investigating officer. The interests of justice require that he remains in custody till he stands his trial.

In *Attorney General v Phiri 1987 (2) ZLR 33*, the court said:

“A person who commits crimes while on bail shows a disregard for the rule of law and a contempt for the administration of justice”

In this instance, not only did the applicant get involved in criminal activity as testified by the investigating officer, he also ignored bail conditions imposed by the court in the case where he was granted bail so his situation is worse than that of a person who just committed crimes but was observing previous bail conditions.

IT IS ORDERED THAT

The applicant’s application for bail pending trial be and is hereby dismissed.

Chigoro law chambers, applicant’s legal practitioners

National Prosecuting Authority, respondent’s legal practitioners