

NOREST CHINYADZERO  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
MWAYERA J  
MUTARE, 25 March 2021 and 01 April 2021

### **Bail Application**

*A Nyamukondiwa*, for the applicant  
*Mrs J Matsikidze*, for the respondent

MWAYERA J: This is an application for bail pending trial. The Respondent opposed the application on the basis that the applicant if admitted to bail is likely to abscond. Also his accomplice has not yet been accounted for.

The applicant is facing allegations of Robbery as defined in s 126 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. The brief facts are that the applicant is alleged to have teamed up with an accomplice who is still at large. They approached the complainant and the accomplice stabbed the complainant once in the stomach while the applicant was also wielding a knife. Complainant pushed the applicant and accomplice and managed to escape. The accused searched the car and stole US\$ 700-00, one six tonne jack, one size 15 spare wheel and a 12 volt Exide car battery. The applicant later sold the stolen 12 volt battery to one Phillip Simbi on credit. Applicant sent one Manuel Stephen Silinde to collect the balance for payment of the battery.

The applicant submitted that he did not rob the complainant but that he obtained the battery in question from a friend one Tapiwa Jakachira who requested him to safe keep the battery till the buyer was available. Later the buyer one Phidza came and paid US\$6-00 for the battery which was sold for US\$50-00. The following day the applicant was conducted by Phidza to collect US\$30-00 for the battery and the accused then send on Bakala who in turn was picked by members of the Criminal Investigating Department. The applicant argued that he is a suitable candidate for bail since he is a Zimbabwean of fixed abode. He is also gainfully employed as a member of the Zimbabwe National Army and as such would not abscond but cooperate as he had done when he was invited by his superiors over the

allegations. Mr *Nyamukondiwa* for the applicant vehemently argued that the seriousness of the offence on its own is not enough reason to deprive the applicant of his right to admission to bail. I must hasten to mention that this is a settled position. It is not in contention that the seriousness of a crime without other factors is not good enough reason to deprive the applicant of his constitutionally guaranteed right to liberty firmly anchored on the presumption of innocence till proven guilty by a competent court of law. See *State v Hussey* 1991 (2) ZLR 187.

Worth noting however, is the fact that in seeking to strike a balance between the liberty of the accused and the interest of justice the factors that fall for consideration should always not be viewed in isolation but rather cumulatively. In the present case the applicant is facing allegations of robbery allegedly committed by 2 people in aggravatory circumstances where it is alleged a knife was used to inflict grave injuries on the complainant causing hospitalisation for surgery as part of treatment process. The nature of the offence and the manner in which it is alleged to have been committed denotes serious circumstances which in the event of conviction would call for imprisonment.

Further what falls for consideration is the strength or otherwise of the state case. In this case the applicant is linked to the offence by recovery of an Exide battery allegedly stolen from the complainant. The applicant was actively involved in chase up for payment of the balance for the sold battery thus even though he asserts he obtained the battery from his friend one Tapiwa Jakachira who is still to be accounted for by the police his own involvement is central in strengthening the state case. When viewed in conjunction with the strength of the state case the fact that applicant is facing serious allegations which in the event of conviction attracts a lengthy custodial term, the temptation to abscond is high. As correctly observed in *S v Jongwe* SC 251/2002 the risk of abscondment becomes high where prospects of conviction and lengthy imprisonment are real. With the porous nature of our borders one does not need a passport to evade justice. That the applicant is a soldier is not an indicator that he will avail himself for the matter to be prosecuted to its logical conclusion. The likelihood of direct or indirect interference with the witnesses inclusive of the complainant cannot be ruled out considering the applicant's influential position as a security officer. The alleged buyer and messenger sent to follow up payment are all known to applicant and can easily be swayed.

Considering the manner in which the allegations surfaced, the factors linking applicant to the offence, the nature of the allegations and the likely sentence, there are a lot of

factors which may compel the applicant to abscond much to the detriment of justice. Accordingly therefore in this case there are compelling reasons militating against admission of applicant to bail.

In the result it is ordered that:

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

*Tanaya Law Firm*, applicant's legal practitioners  
*National Prosecuting Authority*, respondent's legal practitioners