

SEEMYLOG CHIGOORA  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
MWAYERA J  
MUTARE, 25 March and 1 April 2021

### **Bail Application**

Applicant in person  
*M. Musarurwa*, for the State

MWAYERA J: The applicant is facing a charge of possession of a specially protected animal species. It is alleged that on 5 January 2021 and at around 1100 hours the applicant who was in the company of four other accused persons who are still at large were driving a Toyota Corolla vehicle Registration Number ACW 2580 silver in colour and they parked it along Harare-Mutare Highway at Hwedza turn off, Rusape. They were intercepted by police detectives and they were found in possession of two live pangolins. The pangolins were placed on the back seat covered with a white sack. The applicant is seeking for admission to bail pending trial. The respondent is opposed to the application.

In terms of s 50 of the Constitution of Zimbabwe (Amendment No. 20) 2013, an arrested person is entitled to be released on bail either conditionally or unconditionally unless there are compelling reasons justifying the arrested person's continued detention. The provisions of s 117 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] outline guidelines on what ought to be considered in deciding whether or not to admit an applicant to bail pending trial. These factors among others fall under scrutiny.

- (i) Whether the accused will stand trial.
- (ii) Whether the accused will attempt to influence or intimidate witnesses or conceal or distort evidence.
- (iii) Whether the accused's release will undermine or jeopardise the objective to proper functioning of the criminal system inclusive of the bail system.
- (iv) Whether the accused if released on bail he will endanger the safety of the public or any particular person or will commit any offence referred to in the first schedule.

The court in striving to strike a balance between the right to liberty and the interest of justice has to consider all the factors cumulatively so as to come up with a proper and just decision. In order to properly weigh the right to liberty and interest of justice the court has to consider amongst other factors, the applicant's defence or explanation, the seriousness of the offence coupled with the strength of the State case and taking into account the circumstances of the commission of the offence. The likely sentence in the event of a conviction is also a relevant consideration when assessing the likelihood or otherwise of absconding.

In *S v Ndlovu* 2001 (2) ZLR 261 it was held that it is desirable for an accused to lay his defence as it has a bearing on his assurance that he will attend trial. The applicant's brief explanation to the charge is that he was just a passenger in the accomplices' vehicle. He was seated at the back seat where the sack containing the two pangolins was recovered by the police. He denied knowledge of what his accomplices were doing with the pangolins. When they were intercepted by the police he was arrested while seated next to the pangolins.

The State is opposed to bail on the basis that the applicant's co-accused are in custody and considering the circumstances there is no basis for differential treatment of the co-accused and applicant. The State argues that the State case is even stronger against the applicant as he was seated closet to the pangolins. The State contended that the applicant failed to escape because of the central position he occupied in the car. The fact that the applicant is not a stranger to his accomplices and co-accused further fortifies his involvement in the unlawful enterprise.

The State thus argued that the seriousness of the allegation coupled with the strength of the State case when combined with the likely mandatory sentence of 9 years are factors which can induce the applicant to abscond.

In this matter considering that the applicant is facing serious allegations for which there is a possibility of imposition of a lengthy custodial term, and that the State case is strong, the temptation to abscond is high. The interest of justice will be prejudiced by admitting the applicant to bail.

I am thus satisfied that there are compelling reasons justifying continued detention of the applicant.

In the circumstances, the application is hereby dismissed.

*National Prosecuting Authority, Respondent's legal practitioners*