

STEPHEN CHIKODZA
and
BINDA SASILA
and
DANIEL HANZI MAKORE
versus
THE STATE

HIGH COURT OF ZIMBABWE
CHAREWA
HARARE, 16, 29 July & 3 August 2021

Bail Application

Ms Maheya, for first applicant
Second and third applicants, *in person*
Ms Mtake, for respondent

CHAREWA J: The applicants are facing a charge of robbery as defined in s 126(1)(a) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. They seek, and respondent opposes, their application for bail pending trial.

Applicants, together with one Zephania Munyuki, a member of the Zimbabwe National Army were arrested on 3 May 2021 on charges of having robbed, at gunpoint, one Bangwani Mlilo of his Subaru motor vehicle registration number ADX8492 in Granary Park, Harare on 1 May 2021.

The arresting officer, Detective Constable Chikerema, testified that, acting on a tip off, the police located first applicant and Zephania Munyuki at Kuwadzana 4 shopping centre and only managed to arrest them after a chase as the two fled when the police were in the process of identifying themselves for purposes of effecting arrest. Upon conducting a body search, Zephania Munyuki was found in possession of the pistol used in the robbery in the inner pocket of his jacket. And upon interview by the arresting details, the first applicant admitted to the robbery and revealed where the vehicle was parked in Budiriro. He also disclosed the names

of second and third applicants and in the presence of the arresting detail, and on loud speaker, called second applicant confirming plans for a second robbery planned for that day in Mufakose. First applicant and Zephania Munyuki then accompanied the police to Current Shopping Centre in Budiro where they pointed out second and third applicants. Upon the police attempting to identify themselves and effect an arrest, second and third applicants also attempted to flee and were only arrested after the firing of gunshots into the air. The four accomplices then separately led the police to the car park where complainant's vehicle was parked. The car park owner identified the four as the persons who had left their vehicle for safekeeping on allegations that it had run out of fuel. First applicant informed the police that he had instructed second applicant to hide the car keys in the car, and second applicant led to the recovery of the keys under the car seat.

The arresting detail and the respondent oppose the grant of bail to the applicants on the grounds that third applicant had purposely travelled from Murehwa to Harare to commit the crime. Further, the evidence against the applicants is overwhelming in circumstances where applicants do not suggest any plausible explanation of why they are being accused of such a serious offence. Further applicants have already attempted to flee and were only arrested with difficulty. This taken together with the gravity of the offence and the likelihood of a long custodial sentence, upon conviction, raises a reasonable apprehension that applicants are likely to abscond if released on bail.

On their part, applicants contend that there are no compelling reasons justifying their continued incarceration as they are of fixed abode and have no travel documents. They are not likely to commit further offences or to interfere with witnesses as they were arrested while socialising or going about their business. Neither the weapon used in the commission of the offence nor the keys to complainant's motor vehicle were recovered on their person. In any event the presumption of innocence operates in their favour such that, on balance, the interest of justice may be properly served by the grant of appropriate conditions.

However, it came out in the cross-examination of the arresting officer that he was not known to applicants, nor were applicants known to him. No reason was advanced why he would

falsely and wrongfully incriminate them. It is also came out that applicants separately led the police to the car park where complainant's vehicle was recovered. None of the applicants disputed the arresting detail's testimony that the owner of the car park where the vehicle was parked identified all four of them as the persons who left the car in his care. Neither was it disputed that first applicant called second applicant on loud speaker in the presence of the police and arranged to meet to carry out another robbery, thus leading to second and third applicant's arrest. No explanation was tendered as to why third applicant was waiting with second applicant at Current Shopping Centre to meet with first applicant who was planning another robbery. Nor was a reasonable explanation proffered why the applicants attempted to flee from arrest.

It is not disputed that a pistol used to commit the robbery was found on a co-accused, or that first and second applicant led the police to the recovery of the stolen vehicle and its keys. I must therefore agree with the respondent that there is overwhelming evidence against applicants of their complicity in the commission of a grave offence which likely outcome is conviction and a custodial sentence.

The testimony of the arresting detail that applicants are also tied to a robbery which occurred in Kadoma was not contested. Besides, it was the testimony of the arresting officer that the police were only able to identify and arrest second and third applicants on the basis of a telephone call by first applicant to second applicant confirming a further planned robbery, This suggests, and belies, applicants claim that they are not likely to commit further crimes but is an indication of a propensity to commit similar offences.

I note that that third applicant's claim of alibi is contradictory: he claimed that he was in Murehwa, but does not explain how he then came to be arrested in the company of second applicant in Budiriro, nor does he deny this fact. As for first applicant, he initially claimed to have been arrested while braaing at Kuwadzana 3 Shopping Centre, then in his supplementary bail statement he contrarily claimed that he was in his rural home in Murehwa. Further and in any event first applicant and third applicant have not disclosed their national registration numbers as appears on the Form 242. First applicant even went further by seeking to mislead

the court that that Zephania Munyuki had been granted bail and therefore that he should be treated likewise, when this is not true..

In the result, it is the view of this court that applicants cannot be trusted with pre-trial liberty given their attempts to flee from arrest. Besides, it is trite that the absence of travel documents does not necessarily rule out abscondment. Further, given the lack of candidness of the applicants, and the overwhelming evidence against them, I find that on balance therefore, their personal interests are far outweighed by the interests of justice: to safeguard public safety from the likelihood of similar offences. Applicants are therefore not good candidates for bail.

In the premises, the application for bail pending trial is dismissed.

Maseko Law Chambers, first applicant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners