MGCINI RAMACHELA
versus
THE STATE

WILSON KANETSA
versus
THE STATE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 11 November & 16 December 2015

Bail Application

N. Chigoro, for the applicants
B. Murevanhema, for the State

ZHOU J: This judgment is in respect of two applications for bail pending trial by the applicants. The two applicants and their alleged accomplices are facing charges of robbery (eleven counts), eight counts of attempted murder, unlawful possession of firearms, explosives and live ammunition. They applied separately for admission to bail pending their trial. Subsequently one joint bail statement was filed in respect of both the applicants. The application for bail is opposed by the State.

The robberies which the applicants are being charged with were committed in different parts of the country, such as Chinhoyi, Kwekwe, Banket, Chiredzi, Zaka, and Karoi. Almost all the robbery cases involved the use of firearms. The two applicants deny being found in possession of firearms.

Section 50(1) of the Constitution of Zimbabwe provides as follows:

"Any person who is arrested –

(a) . . .
(b) . . .
(c) . . .

(d) Must be released unconditionally or on reasonable conditions, pending a charge or trial, unless there are compelling reasons justifying their continued detention".

Section 117(1) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] provides the following:

> "Subject to this section and section 32, a person who is in custody in respect of an offence shall be entitled to be released on bail at any time after he or she has appeared in court on a charge and before sentence is imposed unless the court finds that it is in the interests of justice that he or she should be detained in custody."

Section 117(2) of the Criminal Procedure and Evidence Act provides:

> "The refusal to grant bail and the detention of an accused in custody shall be in the interests of justice where one or more of the following grounds are established –
> (a) Where there is a likelihood that the accused, if he is released on bail will –
> (i) Endanger the safety of the public or any particular person or will commit an offence referred to in the first schedule; or
> (ii) Not stand his or her trial or appear to receive sentence; or
> (iii) Attempt to influence or intimidate witnesses or to conceal or destroy evidence; or
> (iv) Undermine or jeopardise the objectives or proper functioning of the criminal justice system; or
> (b) . . ."

Thus where the interests of justice would be undermined by the release of the applicants on any of the grounds listed in s 117(2) or any other factor which may be relevant then there would be compelling reasons to deny the applicants the right to be released on bail. Compelling reasons are therefore factors which militate against the admission of an accused person to bail. Put in other words, where such "compelling reasons" are shown to exist the accused person's right to liberty must yield to the proper administration of justice.

The application *in casu* is opposed on the grounds that the applicants are likely to abscond if they are released on bail by reason of the following facts: (a) that the applicants are facing charges relating to very serious offences, and (b) that there is overwhelming evidence linking the applicants to the allegations being made against them; and, further, that the applicants have a propensity to commit serious offences. It was held in the case of *Mahata* v *Chigumira NO & Anor* 2004 (1) ZLR 88(H) at 92D-E, that the attitude of the prosecution to an application for admission to bail, though not necessarily decisive, is a factor which the court will take into account together with the other relevant considerations.

In the case of *S* v *Jongwe* 2002 (2) ZLR 2009(S) at 215B-C, Chidyausiku CJ held the following:

"In judging the risk that an accused person would abscond the court should be guided by the following factors:

(i) The nature of the charge and the severity of the punishment likely to be imposed on the accused person upon conviction;
(ii) The apparent strength or weaknesses of the State case;
(iii) The accused's ability to reach another country and the absence of extradition facilities from the other countries;
(iv) The accused's previous behaviour;
(v) The credibility of the accused's own assurance of his intention and motivation to remain and stand trial."

The applicants are indeed facing a multiplicity of very serious allegations of robbery involving the use of firearms as well as attempted murder and unlawful possession of firearms. There is sufficient evidence linking the applicants to the offences or, at least, to some of them. The confirmed warned and cautioned statement of Wilson Kanetsa who is one of the applicants gives a very detailed narration of his and his co-applicant's link to the other persons who are accused of committing the crimes alleged with the applicants. That statement cannot be simply ignored. It has not been satisfactorily explained by the applicants. Mgcini Ramachela does not explain why Wilson Kanetsa would implicate him in the allegations. Clearly, therefore, there is, in my view, a strong case against the applicants which in all probability would induce them to abscond if they were to be released on bail. Also, the different places in which the crimes were committed suggest some sophisticated planning and a determination to continue committing the offences. The number of motor vehicles involved, as detailed in the warned and cautioned statement of Wilson Kanetsa, shows that the applicants are very mobile and would easily evade arrest by the police should they abscond.

Given the above circumstances, it seems to me that there are good grounds for refusing to grant the application for bail pending trial.

In the result, the application is dismissed.

Makiya & Partners, applicants' legal practitioners
National Prosecuting Authority, respondent's legal practitioners