

FELIX MAHACHI  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
ZHOU J  
HARARE, 29 August 2017

### **Bail application**

Applicant in person  
*T Kasema*, for the State

ZHOU J: This is an application for bail pending trial. The trial involving the applicant and his co-accused persons commenced but was postponed owing to the insufficiency of the time allocated. The applicant made an application for admission to bail after the postponement of the trial. The application was dismissed on the basis that notwithstanding the fact that some of his co-accused had been admitted to bail the evidence led sufficiently linked the applicant to the offence in that he was identified by the witnesses who testified as one of the persons who assaulted the deceased person. In view of the seriousness of the offence and the strength of the evidence linking the accused to the offence the court came to the conclusion that there were compelling reasons for dismissing the application.

A subsequent application could therefore only be made on the basis of changed circumstances. There are indeed changed circumstances in this matter in the sense that there has been a considerable period of time which has passed since the applicant's last application for bail was dismissed on 25 February 2016. More significantly when the trial was set down for resumption it turned out that both assessors involved in the trial had died. In view of the death of the two assessors there has to be a trial *de novo* of this matter before a properly constituted court. The instant application for admission to bail was filed prior to the giving of the order of this court directing a trial *de novo*. When the bail application was set down for hearing Mr *Kasema* for the State indicated that the State was not opposing the admission of the applicant to bail pending trial. The matter was, however, postponed to enable the police to

ascertain the genuineness of the address given by the applicant. That exercise took some time and the matter had to be postponed to today's date for the information relevant to be availed.

The applicant, in his submission on 25 July 2017 stated that the address in question No. 61 Shumba Street, Rimuka, Kadoma is an immovable property which belongs to his mother whose name he gave as Naome Mahachi. Subsequently the applicant tendered to this court an affidavit deposed to by one Magret Chikwiro on 1 August 2017. In that affidavit, the said Margert Chikwiro stated that she resided at the same address 61 Shumba Street, Rimuka, Kadoma, and that the applicant is his maternal uncle, a brother of the deponent's mother. She undertook to stay with the applicant at that address.

The affidavit tendered to this court by Kudzanai Dzomba of ZRP CID section Kadoma shows that the property in question is owned by a female adult, Tendayi Banda, who is not related to the applicant. Tendayi Banda notified Kudzanai Dzomba who is part of the investigating team in the murder case that the applicant used to be a tenant at the property in question prior to his arrest in connection with the murder case. The applicant's wife who used to stay at the property with him vacated the property after failing to pay rent following the arrest of the applicant. From the above information, it is clear that the applicant was being deliberately mendacious when he stated that the property belonged to his mother. In view of his conduct in deliberately seeking to mislead the court, it becomes difficult to accept any of his assurance that he would stand trial if he was to be admitted to bail. While the passage of time and the ordering of a trial *de novo* are indeed changed circumstances, this court is convinced that there are compelling reasons not to admit the applicant to bail when regard is had to the strength of the case against him, the seriousness of the offence and the fact that he has shown an inclination to mislead the court about his place of residence if he is admitted to bail, all of which would show that he would in all probability abscond if he is admitted to bail. The administration of justice would, thus be jeopardized by admission of the applicant to bail at this stage.

In the result, the application for bail is dismissed.

*National Prosecuting Authority, State's legal practitioners*