

JOHN MABHUNU
and
THE STATE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 25 July 2017

Bail

Applicant in person
T. Kasema, for the respondent

ZHOU J: This is an application for bail. The applicant has 2 matters in which he is facing charges of murder. The applicant appears under 2 different names. In the trial which is before PHIRI J his name is given as John Mabhunu, which is the name under which the instant application has been made. The trial matter which is before this court is under the name Wellington John Gwanyanya Mabhunu. In the present application the applicant has stated that Wellington is not his name. However, he did not raise the issue of the name in the trial in which what remains is the handing down of judgment. Judgment was reserved.

In terms of s 50 of the Constitution a person who is being charged with a criminal offence is entitled to admission to bail pending determination of the case against him unless there are compelling reasons for keeping him in detention. In the case of the trial in which all evidence has been led the court has the benefits of having listened to the evidence from both the prosecution and the defence.

The second point to be made is that this application comes against the backdrop of another application for admission to bail which was made by the applicant in April 2017. The record reveals that prior to that the applicant had filed another application on 27 February 2017 which was also predicated on changed circumstances. Before that the applicant had also instituted an application based on changed circumstances on 14 November 2016. Two other applications had been made prior to the application of 14 November 2016. These were filed on 1 August 2016 and 15 June 2016. Thus all in all the record shows that the applicant has to date filed not less than six applications seeking admission to bail.

Where an applicant for bail has previously applied and the application has been considered, a subsequent application can only be founded upon changed circumstances. While the passage of time can be considered as a change in circumstances, it has to be weighed against all the other factors relevant in the consideration of an application for admission to bail. *In casu* the applicant points to the admission of his co-accuseds to bail in the matter which is pending before PHIRI J. The court considered the circumstances which distinguished the applicant from his co-accused in that matter. One of those factors was that he has another charge of murder in which he is awaiting judgment. Thus the issue of co-accuseds having been granted bail does not constitute a charge in his circumstances for the purposes of the present application.

In relation to the matter in which judgment has been reserved, the offence is very serious. The alleged murder was committed in the course of a robbery. The evidence implicating the applicant is overwhelming. He was found in possession of property belonging to the murder victim. In addition, the applicant in his warned and cautioned statement which was confirmed by the Magistrate at Kadoma placed himself at the scene of the offence, and admits to participating in the offence although he stated that the missile which killed the deceased was thrown by his accomplice. The applicant states in that statement, and confirmed in his evidence during the trial, that after the deceased was immobilised by the attack he searched the deceased person and made away with valuables. In short, there is sufficient evidence linking him to the murder. The only question for determination will be of the degree of his participation. That is a matter for the trial, not for the instant application.

The seriousness of the charge against the applicant, the overwhelming evidence implicating him, and the fact that he has another serious charge of murder against him are sufficient to induce him to abscond. There are therefore compelling reasons not to admit the applicant to bail.

In the premises, the application for bail is without merit and is accordingly dismissed.

National Prosecuting Authority, respondent's legal practitioners