

ISHEUNESU MAPAKO

And

MISHECK ZIFUNZE

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 23 & 29 NOVEMBER 2012

N. Hlabano for the applicants
Ms A. Munyeriwa for the respondent

Bail Application

NDOU J: This is an application for bail pending trial. The application is opposed on the grounds of likelihood of abscondment, likelihood of interference with state witnesses and the existence of other pending cases (the latter in respect of the second applicant only). The applicants are jointly charged with theft of a consignment of 33 tonnes of cotton seed valued at US\$6 700,00 as well as attempted theft of a MAN haulage truck with two trailers. The salient facts are that the first applicant is employed at Sagitaur Bulk, in South Africa as a truck driver. The second applicant was once employed at Sagitaur Bulk as a driver. On 23 October 2012, the first applicant collected 33 tonnes cotton seed from Continental Ginnery, Lusaka, Zambia which he was to transport and deliver in South Africa using his employer's MAN truck, registration number WJP 724 GP with two trailers with registration numbers NHL 022 GP and NHL 023 GP respectively. The first applicant allegedly took the said consignment to Harare where he met the second applicant. The two hatched a plan to sell the consignment in Harare. They then sold the consignment of cotton seed to Clemence Zimhunu for \$3 300,00. The latter disposed of the cotton seed and it was therefore not recovered. The police, however, recovered \$2 000,00 from first applicant from his share of spoils. In count 2, it is alleged on 30 October 2012 the two applicants drove the above-mentioned truck and its trailers to Gweru where they intended to sell it. Upon arrival in Gweru, the two applicants teamed up with their friends Bernard Mupeyiwa and Deophney Chidalewa and started looking for buyers for the truck and the trailers. The applicants tried to sell the truck and trailers for US\$30 000,00. They were arrested whilst in the process of conveying the truck to the person who had shown interest in buying the same. The second applicant is also facing charges of dishonesty in Zvishavane Police under CR 14/07/12 and CID CR 04/07/12.

It is trite that the primary question to be considered is whether the applicants will stand trial or abscond if admitted to bail – section 117 (3) of the Criminal Procedure and Evidence Act [Chapter 9:07] and *S v Ndlovu* 2001 (2) ZLR 261 (H). *In casu*, the investigating officer in his affidavit had indicated that the applicants tried to flee at the time of the arrest. The applicants were ordinarily resident in South Africa on account of their employment although they are Zimbabwean citizens. The offences outlined above are very serious which, if they are convicted, will result in lengthy terms of imprisonment.

The charge in count one seems very strong. The applicants do not seem to deny that the consignment of cotton seed that the first applicant was supposed to deliver in South Africa ended up being sold in Harare whilst it was in his custody. In his bail application the first applicant does not even bother to explain how the cotton seed left his custody and ended up being sold. He does not allege theft from him.

The applicants are known to state witnesses and they are likely to interfere with them.

I am satisfied that the applicants are not good candidates for bail and I therefore refuse their application for bail pending trial.

Garikayi & Company c/o Calderwood, Bryce, Hendrie & Partners applicants' legal practitioners
Criminal Division, Attorney General's Office, respondent's legal practitioners