

TAKUDZWA CHERA
versus
THE STATE

HIGH COURT OF ZIMBABWE
FOROMA J
HARARE, 29 July 2021

Bail Ruling

Applicant in person
V Mtake, for the respondent

FOROMA J: The applicant who was charged with armed robbery applied for bail pending trial which the State did not oppose. In support of his application for bail the applicant attached Form 242 which reflected that police were opposed bail. Police in opposition to bail claimed that the applicant had confessed to having committed the offence and led the police to the scene of crime.

In response to the bail application, the State as respondent conceded the applicant's bail application claiming that the only evidence against applicant was the inadmissible implication by a co-accused and that the police had indicated that the accused had not formally confessed to the commission of the offence. Given the prosecutor's response to the applicant's application which contradicted the investigating officer's attitude to bail in Form 242 the court considered it necessary to call the Investigating Officer to testify on his attitude to bail.

When the Investigating Officer attended court to testify, it became clear that the police had also changed its attitude to the grant of bail to applicant. In court, the Investigating Officer one Francis Musipa indicated that the police were no longer opposed to bail because the complainant was no longer contactable after leaving the employment of applicant's uncle. In the evidence led in court, the investigating officer did not retract the grounds that had been put forward for opposing bail. In the circumstances, the court found the respondent's position untenable and ruled that the State's concession was not reconcilable with the police's attitude to bail as reflected in Form 242. For these reasons the court considered that the State's concession was misplaced. It was also the court's view that the respondent did not appreciate

the correct approach the court should apply when dealing with applicants for bail where the prosecution does not oppose the granting of bail. Section 117(5) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] imposes a duty upon the court to weigh up the personal interests of the accused against the interests of justice as contemplated in subs (4) regardless of the prosecution's concession to accused's application for bail. Subsection (5) actually reads as follows:

“(5) Notwithstanding the fact that the prosecution does not oppose the granting of bail, the court has a duty to weigh up the personal interests of the accused against the interests of justice as contemplated in subsection 4.”

It was the court's view that the circumstances of the case namely the applicant's alleged confession and indications and the inherent seriousness of the allegations i.e. armed robbery it was not in the interest of justice that the applicant be granted bail. In the circumstances the applicant's bail application could not succeed and was accordingly dismissed.

National Prosecuting Authority, State's legal practitioners