



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: A148/22

In the matter between

ROMUALD GANMENE MBAKUM

APPELLANT

AND

THE STATE

RESPONDENT

Date of Hearing: 10 October 2022

Date of Judgment: 31 October 2022 (to be delivered via email to the respective counsel)

JUDGMENT

THULARE J

[1] This is an appeal against the decision of a magistrate to grant the appellant to bail. The appellant was charged with robbery with aggravating circumstances, unlawful possession of a firearm, reckless or negligent driving, attempted murder and theft. Robbery with aggravating circumstances is listed in schedule 6 of the Criminal Procedure Act, 1977 (Act. No. 51 of 1977) (the CPA). The State opposed the appeal.

[2] The issue is whether the magistrate was wrong to refuse bail.

[3] The appellant submitted an affidavit for his bail application. In his affidavit, he said that he was 32 years old and a citizen of Cameroon. He is unmarried and cohabitates with a partner. He has a 3 months old baby from a previous relationship. He contributes R1000-00 for the maintenance of the minor. He resides at an address in Mfuleni, Cape Town, with his girlfriend. The property is rented. He has been living in Cape Town since 2013. He is self-employed as a vendor selling largely old furniture and makes a profit of about R9000-R10000 per month from which he lived with his girlfriend and child. He is a sole proprietor, with his business depending on his physical presence to function. His continued incarceration will affect his business and the livelihoods of his family which depended on him. He was a registered tax payer according to him, and had attached a notice of registration issued by South African Revenue Service (SARS) issued to him in 2016.

[4] According to him, he arrived in South Africa in 2014 and obtained an asylum seekers permit which has since expired. A copy of such permit was attached to his application. It has since expired and he had not been able to renew it. It is due to the refugee offices being closed in Cape Town. Should he get a reasonable opportunity, he has intentions of re-applying, an opportunity that he will not be offered in prison. He has not left South Africa since he arrived. He has a South African driver's licence which he obtained in 2016. He is healthy although he suffered panic attacks. He has no previous convictions, pending cases or outstanding warrants of arrest. He intends to plead not guilty to the charges and did not wish to disclose the basis of his defence at this stage and will do so at trial. Covid-19 adversely affected his preparation for bail as during certain alert levels consultation with legal representatives was limited. These limitations may extend into his trial period and may have an impact on his preparation for trial and thus affect his right to a fair trial. His partner was able to pay R3000 for bail.

[5] The State submitted the affidavit of the investigating officer attached to the organized crime unit. On 17 July 2021 at about 06:55 five African males entered Prime Meat Market in Main road, Grabouw, posing as customers. Three of the five suddenly drew firearms and pointed the guns at the workers and forced the workers into one of the cooler fridges. One of the five men closed the shutter door so that no one could move in or out of the store. The suspects ransacked the store. They took all the cash that was in the tills. They forced the manager to open his office and took cash from the safe. They took a laptop, safe keys and money bags. The total cash robbed was R33 000.

[6] The suspects fled and drove away in a White Toyota Quest (the get-away car) towards Sir Lowry's pass. The manager immediately called the police and a security company. Police patrolling the N2 highway spotted the get-away car. They established that the get-away car used false number plates. They switched on their blue lights and ordered the driver to pull over. The driver instead accelerated. The occupants of the get-away car fired several shots at the police. The police returned fire. The driver of the get-away car drove negligently and recklessly. The get-away car collided with traffic lights at the corner of Broadway and N2 highway. The police acted swiftly and arrested five suspects. One of the suspects was killed in the shootout with the police. The suspects and the vehicle were searched. The police found three unlicensed firearms, one imitation firearm, R30 401 in cash, a laptop and safe keys.

[7] The business which was robbed had CCTV cameras. The suspects were clearly visible on the footage. Captain Pieters from Grabow Criminal Investigations Department in the SAPS saw the footage and was then called to the scene of the arrest. He observed that the suspects arrested fitted the ones he had seen on the video footage, including clothing, and the vehicle impounded by the police fitted the description of the vehicle described as the one in which the suspects got away from the scene, according to eye-witnesses. The appellant could not be seen on the footage of what happened at the business.

[8] He was arrested as the driver of the get-away car. The car was identified from the scene. It was the car that the police ordered to stop on the N2. The car attempted to drive away. He was identified by the police official who arrested him, as the person who drove the get-away car and refused to stop when ordered by the police, who drove recklessly or negligently, who violated several traffic laws in an attempt to evade arrest and who, driving the get-away car, collided with the traffic lights before he was arrested. The get-away car was discovered to have been hijacked on 13 July 2021 in Gugulethu, that is, 5 days before it was used in a business robbery. The appellant was the driver of the vehicle in which unlawful firearms were found, and items which were robbed from the victims were found, around 30 minutes after the robbery.

[9] The State provided the affidavit of a Control Immigration Officer in the Department of Home Affairs. He was asked by the SAPS to do a status determination of the appellant, a Cameroon national. There was no record of the appellant's legal residential status to sojourn in the Republic of South Africa. He found the appellant to be an undocumented immigrant residing unlawfully within the borders of the Republic of South Africa. The national movement control system, a copy of which was attached to the immigration official's affidavit, records the movement of people crossing the country's national border posts. Using the particulars provided by the appellant to conduct the search of the system using his surname, first name and date of birth, the system had no record of a traveler number, Identity number or File reference number under those particulars. It had no information on country of birth, sex, traveler type and PR number. There are no entries on travel dates and reference dates. The appellant was to be charged criminally for being illegal in the country and would be deported back to his country of origin after his criminal case was finalized.

[10] Section 65(4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (the CPA) provided:

“Appeal to superior court with regard to bail

65(4) The court or judge hearing the appeal shall not set aside the decision against which the appeal is brought, unless such court or judge is satisfied that the decision was wrong, in which

event the court or judge shall give the decision which in its or his opinion the lower court should have given.”

Section 60(11)(a) of the CPA provided:

“Bail application of accused in court

60(11) Notwithstanding any provision of this Act, where an accused is charged with an offence referred to –

- (a) In Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release.”

[11] It is humanly impossible for the appellant to have resided in Cape Town since 2013 but to have arrived in the Republic only a year later, 2014. It is not for this court to speculate as to how he came to be in possession of documents which purport to be issued by the Department of Home Affairs, with a bar code, a date stamp and a signature. It is by now widely, generally and unfavourably known that such documents are for sale, among other places somewhere in Bellville and Maitland in Cape Town and elsewhere in Yeoville and Hillbrow, Johannesburg. It is for the State to identify and close those shops, as part of its regulation of immigration and reception of asylum seekers into South Africa. For now, it suffices to state that by design, the appellant is a holder of fraudulent documents to make his sojourn in the Republic appear lawful.

[12] The car in which the appellant was arrested, was identified as the one which drove from the scene of the robbery after the robbers fled the scene into it. It was located on the road travelling from the direction of the scene to the direction in which those on the scene indicated the get-away car travelled. It was identified, ordered to stop and chased by the police until it came to a stop after a collision whereafter he was arrested, from the driver's seat. There is a strong *prima facie* case against the appellant.

[13] The appellant displayed disregard for the laws of the Republic. If he was an asylum seeker as he alleged, it was up to him to present himself in person before a Refugee Reception Officer and have his fingerprints or other prints taken and to furnish two

photographs of himself [section 21 of the Refugees Act, 1998 (Act No. 130 of 1998)]. This he did not do since 2014, that is, for eight years. The obtaining of fraudulent documents seems to me to be consistent with his lifestyle. The Republic of South Africa having his authentic identification details, including his fingerprints and photos, enhances his detection and identification, something unattractive for someone who the evidence suggests was appellant's lifestyle, to wit, involvement in criminal activity, including serious and violent crime. The appellant did not provide evidence to countervail the control immigration officer who said that there is no record of appellant movement crossing the country's border posts.

[14] The vehicle that he was found driving at the time of his arrest, had been unlawfully seized from someone while in transit in the township five days before the robbery. There is a strong case against him as the driver of the get-away car in an armed robbery which includes the use of three unlicensed firearms. The facts show that it is probable that the appellant will endanger the public if released on bail. The conduct of the appellant contemporaneous with his arrest, was not consistent with someone who would stand trial. His acquisition of fraudulent documents is also not consistent with someone who is not a flight risk. I am not persuaded that conditions of bail would be appropriate to meet the model of mindset which informs the appellant's pattern of behavior that defines his current archetype.

[15] His personal circumstances, measured against the serious and violent nature of the crime, his role and the interests of society, against the background of all relevant circumstances, do not amount to exceptional circumstances. I am not persuaded that the magistrate was wrong to conclude that the interests of justice do not permit his release.

For these reasons I make the following order:

The bail appeal is dismissed.

DM THULARE
JUDGE OF THE HIGH COURT