



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

RULING

Case no: CC 4/2011

In the matter between:

THE STATE

and

- 1. ANTOINE MBOK**
- 2. M FINANCE (PTY) LTD, a corporate body, duly registered as such in accordance with the Laws of Namibia; represented by ANTOINE MBOK**
- 3. DANIEL DAVID NGHIWILEPO**

Neutral citation: *State v Mbok* (CC 4/2011) [2013] NAHCMD 175 (10 JUNE 2013)

Coram: NDAUENDAPO J

Heard: 28 May 2013

Delivered: 10 June 2013

ORDER

In the result, the application is refused

JUDGMENT

NDAUENDAPO J [1] Before me is an application, brought by the state in terms of section 62 (1) of the Criminal Procedure Act 51 of 1977, as amended, to add further conditions of bail in respect of accused 1.

Background

Accused 1 and 2 others have been arraigned before his court on five counts of corruption and four counts of money laundering involving an amount of N\$3,944,631.64. On 19 November 2010, accused 1 was granted bail by the magistrate court of Windhoek in the amount of N\$3 000 subject to one condition, namely, 'accused must not interfere with any state witnesses or any investigations in an manner whatsoever'. The state is not happy with that and wants the following bail conditions to be added:

- (a) Accused 1 should report to the Office of Anti-corruption Commission (ACC) in Windhoek three times in a week. Once every Monday between 08:00 and 17:00, once every Wednesday between 08:00 and 17:00 and once every Friday between 08:00 and 17:00.
- (b) Accused 1 should hand over his passport to the investigating officer on the day the order is made by the court.
- (c) Accused 1 should not apply for a passport or any travelling document until this case is finalized.
- (d) Accused 1 should notify the investigating officer whenever he wants to leave the district of Windhoek to travel to the other parts of the country.'

Accused 1 opposed the application. Mr Nyambe appeared for the state and Mr Uirab for accused 1.

THE LAW

Section 62(1) Provides:

“Any court before which a charge is pending in respect of which bail has been granted, may at any state, whether the bail was granted by that court or any other court, on application by the prosecutor, add any further condition on bail –

- (a) with regard to reporting in person by the accused at any specified time and place to any specified person or authority;
- (b) with regard to any place to which the accused is forbidden to go;
- (c) with regard to the prohibition of or control over communication by the accused with witnesses for the prosecution;
- (d) with regard to the place at which any document may be serviced on him under this Act;
- (e) which, in the opinion of the court, will ensure that the proper administration of justice is not placed in jeopardy by the release of the accused.”

[2] Section 62 (1) should be read together with Section 63 of Criminal Procedure Act¹, which reads as follows:

- (1) Any court before which a charge is pending in respect of which bail has been granted may, upon the application of the prosecutor or the accused, increase or reduce the amount of bail determined under s 59 or 60 or amend or supplement any condition imposed under s 62, whether imposed by that court or any other court, and may, where the application is made by the prosecutor and the accused is not present when the application is made, issue a warrant for the arrest of the accused and, when the accused is present in court, determine the application.
- (2) If the court referred to in ss (1) is a superior court, an application under that subsection may be made to any judge of that Court if the Court is not sitting at the time of the application.

[3] **BASIS OF THE APPLICATION**

According to counsel for the state, the basis of the application is as follows:

¹ Act No. 51 of 1977 as amended

“(1) Accused 1, unlike his co-accused is a foreign national from Cameroon. He was issued with a Cameroonian passport on the 19th of December 2011 after he was granted bail on the 19th of November 2010. This shows that he applied for a Cameroonian passport after he was released on bail. See attached (**Annexure A2, copy of passport**)².

(2) He is married to a Namibian citizen which entitles him to live in Namibia. See attached (**Annexure A3, marriage certificate**) and (**Annexure A4, copy of identification document of his wife**). It is respectfully submitted that his marriage to a Namibian does not prevent him leaving or fleeing the country because he has a valid Cameroonian passport.

(3) He indicated in his motivation letter dated 14 January 2013 for multiple re-entry VISA addressed to the Ministry of Home Affairs that he owns businesses in Botswana, South Africa and Cameroon. See attached (**Annexure A5, motivational letter for a return visa**).

(4) He has travelled out of Namibia three times since his release from bail. He left the country to Botswana on 24 June 2012 and came back on 26 June 2012. He then left the country on 10 November 2012 with South African Airways via South Africa to Cameroon. He arrived back from Cameroon via South Africa on the 9th January 2013. He left the country again on 26 January 2013 with South African Airways via South Africa to Cameroon. He arrived back from Cameroon via South Africa on the 7th of March 2013. See attached (**Annexure A6, printout from Border Management System of the Ministry of Home Affairs as well as Annexure A2, copy of his passport**).”

[4] Counsel for the state further submitted that circumstances have changed because accused 1 has a foreign passport, has business interest in Cameroon, Botswana and South Africa and he has become a frequent traveler. According to counsel he is facing serious criminal charges of which he is likely to be sentenced to a custodial sentence if convicted.

² Annexures A2 – A6 are annexed to the application by the state.

[5] Counsel for accused 1 submitted that accused 1 is married to a Namibian woman and has 13 minor children who are financially dependent on him for their survival and maintenance.

[6] Although circumstances may have changed, like accused 1 having been travelling out of the country on several occasions, it has not been shown that the proper administration of justice has been placed in jeopardy or will be placed in jeopardy if the status quo remains as far as the bail conditions of accused 1 are concerned. Since his release on bail in 2010 accused 1 has been attending court sessions. The Cameroonian passport was issued to him in December 2011 already. He had travelled three times out of the country since his release on bail, but each time he has returned to Namibia. He travels to Botswana, South Africa and Cameroon for business purposes. He is a self employed businessman marketing satellite television equipment which he procures in Botswana and sell in Namibia. The income that he generates from his business is vital for maintaining and supporting his family. His wife is a Namibian citizen and his 13 minor children all reside here in Namibia. He has been living in Namibia for 10 years and has applied for Namibian citizenship and is awaiting an answer from the Ministry of Home Affairs. In addition he owns substantial immovable properties in Arandis, Okahandja and Windhoek. In addition the trial has not started and as a result no evidence has been adduced in this court to show whether there is *prima facie* case against accused 1 or not.

At this stage the court is not satisfied that a case has been made out to sustain the application.

GN Ndauendapo
Judge

APPEARANCES

STATE : MR NYAMBE
Of the Office of Prosecutor General

ACCUSED: MR UIRAB