

REPUBLIC OF NAMIBIA

NOT REPORTABLE



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
RULING: APPLICATION FOR BAIL**

CASE NO.: CC 06/2014

In the matter between:

STOCKLEY KAUEJAO

APPLICANT

And

THE STATE

RESPONDENT

Neutral citation: *Kauejao v State* (CC 06-2014) [2016] NAHCMD 204 (15 July 2016)

CORAM: SIBOLEKA J

Heard on: 15 April 2016; 29 June 2016

Delivered on: 15 July 2016

Flynote: Bail – Third application – fresh evidence – of no connection not entirely correct.

Summary: The deceased was investigating fifteen head of stolen cattle when he was allegedly killed by being grabbed, throttled, sand put in his mouth to stop breathing. His body and vehicle were burnt out to avoid detection.

Held: A *prima facie* case requiring an answer from the accused is present.

Held: In the result the application for bail is granted.

ORDER

In the result the application for bail is granted.

RULING: BAIL APPLICATION

SIBOLEKA J:

[1] At the hearing of this application the applicant was represented by Mr. Makando and Mr. Lisulo appeared for the respondent.

[2] The applicant and three others are facing charges of murder, theft: read with the provisions of Act 12 of 1990; defeating or obstructing the course of justice. The incident took place in December 2012.

[3] The matter has so far seen a substantial number of prosecution witnesses testifying and cross-examined.

[4] The first application for bail was made in the Magistrate's Court, Gobabis

in 2013 and only accused 4 succeeded.

[5] In 2014 the applicant launched his second application in this court before my brother Liebenberg J, but was unsuccessful. This is his third application for bail before this court.

[6] He now cites the following factors which he describes as fresh evidence: The first is that the prosecution has so far presented several witnesses but according to him they all failed to connect him to any of the allegations he is facing: In my view this is not entirely correct.

[7] During the previous hearing when the applicant was denied bail, mention was made about his two brothers residing abroad, one in the United Kingdom and the other in Canada. The court then found that there was a risk that if granted bail, the applicant may abscond. This situation in my view has not changed.

[8] The summary of substantial facts in terms of section 144(3)(a) of The Criminal Procedure Act 51 of 1977 is that all four accused allegedly acted in common purpose to steal fifteen head of cattle from the Farm Rembrandt. These animals were taken to Farm Groot Ums in the Leonardville area where accused 4 and his uncle were farming. The owner of the cattle asked the deceased to investigate the theft of his cattle and the appellant together with accused 2 and 3 allegedly agreed to kill the deceased to prevent detection of the stolen cattle. This allegedly resulted in accused 2 and 3 killing the deceased by strangling him and or throwing sand into his mouth to prevent him from breathing. The deceased's body and his vehicle were later found burnt out.

[9] Submitting before the ruling, Mr Makando, counsel for the applicant stated that all crucial prosecution witnesses have since testified but none of them has established a *prima facie* case against the accused. This counsel urged the court

not to ignore this important factor in its consideration of the application for bail.

[10] On his part Mr Lisulo, counsel for the prosecution submitted that there is a *prima facie* case against the applicant and that it will not be in the interests of the public and that of the administration of justice to release the applicant on bail. Although this counsel said there were still more than ten prosecution witnesses, he did not deny Mr Makando's contentions that all crucial prosecution witnesses have so far testified.

[11] This only an application for bail and the court is precluded to pronounce itself on the merits because that can only be done at the end of the trial itself. It will suffice to state that so far there is indeed a *prima facie* case that has been established.

[12] After I have carefully listened to the evidence of the applicant regarding his application for bail; the submissions for and against his release on bail; the fact that a substantial number of prosecution witnesses have testified; the fact that at this stage, there is a *prima facie* case against him; conclusion that the accused be released on bail with conditions.

[13] In the result I make the following order:

- The matter is postponed to 18 July 2016 at 10h00 for continuation of trial.
- The applicant (accused 1) is remanded in custody.
- Bail money in the amount of fifteen thousand Namibian Dollars (N\$15,000.00) is granted to the accused on the following conditions:
- If the accused pays the above amount he is warned to come to the High Court (Prison) on 18 July 2016 at 10h00 for the continuation of the trial and to remain in attendance until excused.
- The accused should not leave the Magisterial District of Windhoek before the finalization of this matter.

- He must report himself at Katutura Police Station, Windhoek as follows:
Mondays : 08h00 in the morning
Wednesdays : 18h00 in the evening
Fridays : 18h00 in the evening
- He must surrender his driver's licence to the investigation officer or to the prosecution counsel and is not allowed to apply for the same before the finalization of this matter.
- He must surrender any travel document/passport in his possession, if any, to the investigation officer or the prosecution counsel; and he is not allowed to apply for any of such documents before the finalization of this matter.
- He must not directly or indirectly make contacts with any of the witnesses on this matter in any manner whatsoever.
- It is ordered that the bail conditions be placed before the Station Commander, Katutura Police Station where the applicant will be required to do the reporting during the course of the trial.

A M SIBOLEKA
Judge

APPEARANCES

APPLICANT : Mr. S. S. Makando
Conradie & Damaseb

RESPONDENT : Mr. D. M. Lisulo
Office of the Prosecutor-General, Windhoek