

GODFREY NYAMBUYA and Others versus THE STATE HH 180-11 / CRB 872/11

BHUNU J

HARARE, 30 August 2011

Mr *Bangidza*, for the applicants

Mr *Taruvinga*, for the respondent

Bail Application

BHUNU J: The applicants are alleged to have shot and killed one white rhino with an FN rifle belonging to accused two. They are said to have dehorned the rhino and accused three and four were later arrested at Sam Levy Village while selling the horns. The two accused persons then led the police to accused five and six who were found in possession of the said rhino horns.

The six accused persons appeared before the magistrate at Masvingo charged with contravention of s 45 (1) as read with s 128 of the Parks and Wildlife Act, (Control of Hunting of Specially Protected animals and Products Act [*Cap 20:14*]).

Accused two who is alleged to be the owner of the rifle used to kill the animal has since been granted bail. The three accused persons who were denied bail now appeals to this court arguing that the hearing magistrate misdirected himself by denying them bail when they were entitled to equal treatment with accused two. In fact they were better suited to be granted bail than the second accused who was the owner of the gun used to kill the animal.

The facts as correctly found by the magistrate tend to establish that all the accused persons with the exception of accused two were caught red handed actively selling the rhino horns in question. Accused two was only implicated by his co-accused. He denied the allegations. The magistrate reasoned that the State case was weak in respect of the second accused because his accomplices' confessions were inadmissible against him and there was no other direct evidence against him. Indeed that is the correct position at law.

He then granted the second accused bail on that basis. The rest of the accused were denied bail on the basis that the State had a strong case against them in that they

were caught red handed in the process of committing a very serious crime thereby exposing themselves to a severe penalty which may prompt them to evade trial.

I honestly cannot find any fault with the magistrate's line of reasoning and interpretation of the law. That being the case, the application for bail can only fail. It is accordingly ordered that the application for bail be and is hereby dismissed in respect of all the three applicants.

Manase & Manase, applicants' legal practitioners

The Attorney General's Office, respondent's legal practitioners