

LOVEMORE MOYO

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE

NDOU J

BULAWAYO 9 DECEMBER 2004 AND 27 JANUARY 2005

R Ndlovu for applicant

A Gaibie for respondent

Application for bail pending trial

NDOU J: This is an application for bail pending trial which is opposed. I refused the application on 9 December 2004 and these are my reasons for doing so.

The background of the matter is that applicant was arrested on 12 September 2004 on a charge of theft of motor vehicle. The allegations being that on 2 September 2004, at around 1600 hours, the applicant was approached by four accomplices who told him that they had stolen a Mazda 626 motor vehicle registration number 603-170T at Autocraft Panel and they wished to break it into pieces for spares. The applicant then offered 10 Hydepark, Bulawayo where he participated in the breaking. After breaking it up, the applicant himself, went to conceal the boot of the vehicle in the bushy area of Hydepark. This boot was recovered through the assistance of the applicant.

The applicant also sold two tubeless tyres to one Samuel Chiwaya and through the applicant's indications, one was recovered. Against this background the applicant now applies for bail pending trial. I will consider the grounds of opposition in turn.

Likelihood of abscondment

The offence charged is serious, which upon conviction invariably will result in lengthy imprisonment. According to the investigating officer the applicant has no

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fixed address. In the present case he gave his address as number 10 Flamboyant Road, Sauerstown, Bulawayo. It made the police difficult to locate him because that was not a fixed or permanent place of residence. In a previous case for which he was arrested, he falsely advised the police in 2003 that he stays at 6438 Old Pumula which again made it difficult for the police to locate him. In short, he has tried to mislead the police and appears intent on evading arrest. From the facts authored above, the prosecution case against the accused seems strong. He does not seem to dispute possession of the stolen vehicle soon after the theft. He sold two tyres and disposed of its boot. All these factors constitute an incentive to abscond. This is a factor to be considered even though on its own it may be an insufficient ground to deny the applicant bail – *S v Hudson* 1980(4) SA 145 (D); *S v Ito* 1979(3) SA 734(W) at 740B; *S v Lulame* 1976(2) SA 204 (N) and *S v Ndhlovu* 2001(2) ZLR 261 (H) at 264H-265B.

Interference with prosecution witnesses and tampering with evidence

In this matter some key state witnesses are the applicant's relatives. The applicant may be tempted to influence them or coerce them not to testify. The applicant's accomplices are at large. Some of the parts of the stolen vehicle have not been recovered. There is likelihood of the applicant interfering with witnesses and tampering with evidence. This is a factor that I will take into account.

Risk of commission of further crimes

At the time of this offence the applicant was already facing a similar charge. There is a real danger or a reasonable possibility that the due administration of justice will be prejudiced if the applicant is admitted to bail – *Attorney General, Zimbabwe v Phiri* 1988(2) SA 696(ZH). In the circumstances this court is specifically empowered

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to refuse bail – section 116(7) (C) of the Criminal Procedure and Evidence Act [Chapter 9:07] and *S v Ndhlovu, supra* at 266B-D. Further, I am hesitant to grant bail in this case where the applicant was not acting alone, but in association with others still at large – *S v Vankathathnam* 1972(2) PH H 139(N).

James, Moyo-Majwabu & Nyoni, applicant's legal practitioners
Criminal Division, Attorney-General's Office, respondent's legal practitioners