

CHARLES MUNYARADZI MARATERA

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 17 DECEMBER 2004 & 10 MARCH 2005

T Hara for applicant
Ms T Mthethwa for respondent

Bail Application

NDOU J: This is an opposed application for bail pending trial. On 17 December 2004 I dismissed the application without giving reasons for doing so. These are my reasons.

The respondent opposed bail on three grounds namely, (a) likelihood of abscondment (and not stand trial) (b) likelihood of interference with evidence or witnesses, and (c) likelihood of commission of further crimes.

I will consider these grounds in turn. But before I do that I propose to give background facts of the case. The applicant is facing three charges of armed robbery of motor vehicle which can be outlined as follows:

Count 1

On 11 March 2004 at about 2215 hours at Rainbow Hotel, Bulawayo, the applicant and four accomplices approached Gerald Nachipo armed with pistols and robbed him of cash in the sum of Z\$750 000,00, a Motorola cellular phone and a maroon VW Jetta motor vehicle registration number 784-159V.

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Count 2

On 13 march 2004 at Wragham Grange, Highlands, Harare, the applicant together with accomplices who are still at large, threatened the complainant Danille LalleM armed with pistols and robbed him of his car, a Mercedes Benz 320 silver grey in colour, registration number 756-956C. They used the VW Jetta which they had stolen in Bulawayo (count 1) as their get away car.

Count 3

On 13 March 2004 at about 2300 hours the applicant and his accomplices who were using the aforesaid VW Jetta vehicle as a get away vehicle, approached the complainant Emmanuel Manyika who had just arrived at the gate of his house, umber 32 Mogete Road, Mount Pleasant, Harare. They produced pistols and forcibly drove the complainant in his car, a silver grey Mercedes Benz registration number 792-322M and later dumped him along the Bulawayo-Harare highway near the Snake Park. They also robbed the complainant of his cellular phone, a pair of shoes and packs of Telecell recharge cards. On 15 March 2004 the applicant was arrested in Gweru driving the stolen VW Jetta. It was now fitted with false registration numbers, viz, 616-616F. The applicant was also found selling some Telecell recharge cards that were stolen from Emmanuel Manyika (complainant in count 3). The driver's licence for Gerald Nachipo (complainant in count 1) was also found in the VW Jetta and a fake registration book bearing the false registration numbers was recovered and complainant positively identified the vehicle through the engine and chasis numbers.

Two of the applicant's accomplices are still at large and the other two were arrested in Botswana.

Likelihood of abscondment

The seriousness of the offences of armed robbery of vehicles and possibility of long terms of imprisonment constitute inducement for the applicant absconding and not standing trial. Some of his accomplices were arrested in Botswana and others have sought refuge in South Africa. There is likelihood of the applicant fleeing from the jurisdiction of this court – *Chiadzwa v S* 1988(2) ZLR 19(S); *Hussey v S* 1991(2) ZLR 187 at 191; *S v Ndlovu* 2001(2) ZLR 261(H); *S v Ito* 1979(3) SA 734(W) at 740B; *S v Hudson* 1980(4) SA 145(D) and *S v Fourie* 1973(1) SA 100 at page 101G-H. Further the weapons used were not recovered and some of the accomplices are still at large which factors point in the facilitation of abscondment – *S v Vankathathnam* 1972(2) PH, H 139(N) and *Mutiba v S* HB-1-05. The facts outlined in affidavits of detectives Sadzamari and Foto (who are involved in the investigation of the case) point in the direction of a strong prosecution case. The applicant was driving one of the stolen vehicle fitted with false numbers, was selling property from another charge and had a driver's licence of one of the complainants. In face of such evidence it is desirable for the applicant to at least disclose his defence and not merely make a bald statement – *S v Lulame* 1976(2) SA 204 (N); *S v Hartman* 1968(1) SA 278(T) at 281; *S v Barker* 1965(1) SA 821(W); *R v Grigoriou* 1953 (1) SA 479 (T) and *S v Ndhlovu, supra* at 265E-H.

Likelihood of interference with evidence and/or witnesses

The weapons used were not recovered. The *modus operandi* of the applicant and his gang is that of determined offenders. They used false registration particulars to avoid detection. The applicant's accomplices left the jurisdiction of this court after

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these offences. There is real likelihood of interfering with witnesses and tampering with evidence.

Likelihood of commission of further crimes

The applicant has relevant previous convictions for theft of motor vehicle.

This is a relevant factor working against him. In *S v Matanhire* HB-22-03, CHEDA J said,

“... the fact that an applicant has previous convictions is a relevant factor in so far as it shows that he has a propensity to commit further offences.”

Further, the *modus operandu* and the fact that the applicant and his gang robbed three complainants one in Bulawayo and two in Harare within a short space of time, clearly shows that the public is entitled to protection from the depredation of the applicant and his gang – *Attorney-General, Zimbabwe v Phiri* 1988(2) SA 696 (ZH); *R v Gentry* (1956) Crim LR 120 (CCA); *S v Patel* 1970(3) SA 563 and section 116(7) (C) of the Criminal Procedure and Evidence Act [Chapter 9:07].

Looking at all the above factors against what the applicant adduced in his papers, I came to the conclusion that he is not a suitable candidate for bail and dismissed his application.

T Hara & Partners, applicant's legal practitioners
Criminal Division, Attorney-General's Office, respondent's legal practitioners