Judgment No. HB 135/2002
Case No. HCA 140/2002

NABOTH MUNATSI

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 21 OCTOBER & 12 DECEMBER 2002

P Hare for the applicant
H Ushewokunze III for the respondent

Bail Application

CHEDA J: This is a bail application against applicant's continuous incarceration before trial. Applicant is facing a charge of theft of a motor vehicle and alternatively being found in possession of goods which give rise to a suspicion that they were stolen.

The brief facts are that on 9 August 2002 at about 1400 hours appellant's sister was found in possession of a motor vehicle being a Nissan Sunny Sedan registration number 550-078K, investigations by members of the police revealed that the registration number in fact was similar to a Datsun Nissan Sedan. The owner of the Datsun Nissan Sedan was IMF Executive Holdings, Bulawayo and it was involved in an accident which resulted in it being written off. This, therefore, means that the vehicle was no longer in existence. Appellant's sister then revealed that the motor vehicle in question belonged to applicant which led to his arrest.

In his application for bail applicant argued that he is unlikely to abscond because he:

1. has no travel documents.
2. has no means to flee as he has no relatives and/or connections outside Zimbabwe.
3. Is confident that he will be acquitted of these charges because he bought the shell, engine and other parts from car breakers which explains his possession of the motor vehicle.
4. Is unlikely to interfere with any witness as he does not even know who the witnesses are.

On the other hand respondent through *Mr Ushewokunze* argued that if granted bail appellant is likely to commit further offences. The cardinal principle governing these courts' approach to bail is basically that the interest of justice must not be prejudiced. This court, therefore, in determining whether or not appellant should be admitted to bail, should as a necessity balance appellant's right to liberty against the administration of justice. In *McCarthy* v *R* 1906 TS 657 at 659 INNES CJ stated,

> "the court is always desirous that an accused should be allowed bail if it is clear that the interests of justice will not be prejudiced thereby."

While appellant was on bail, it is alleged he committed a similar offence and it is for this reason that, respondent is of the strong view that he should be deprived of his liberty because of this propensity to commit further crimes. REYNOLDS J in *A-G* v *Eric Derrick Phiri* HH-487-87 at p 6 remarked,

> "It is my view that a person who commits a similar offence to the one with which he is charged while on bail shows not only a disregard for the rule of law, but contempt for the administration of justice as well."

I fully associate myself with these remarks by the learned judge as it is clear that such a person is least bothered by the allegations against him. In a normal situation, the last thing to do, is for such a person to find himself improperly associated with similar allegations. It is clear that to such a person the old adage, "once beaten twice shy" has no meaning in his vocabulary.

It is, perhaps necessary to briefly deal with the basic principles of bail in relation to an accused. The presumption of innocence has been unanimously accepted as a rule which operates in favour of the accused's pre-trial liberty.

J Van der Berg: *Bail, A Practitioners Guide*, Juta & Co 1986 at p 59 the learned author lays down the paramount considerations which the court should take into account in striking a balance between the interests of the accused and the interests of the administration of justice as follows:

1. whether the accused will stand trial
2. whether the accused will interfere with state witnesses
3. whether the accused will commit offences while on bail; and
4. whether accused's release will jeopardise law and order or state security.

Our courts have previously refused bail where there is a likelihood that accused will commit further offences while on bail, see *S* v *Patel* 1970 (3) SA 565 (W).

The likelihood to commit further crimes must be a real risk. In order to determine the absence or existence of such risk, in my view it is pertinent to take into account all the surrounding circumstances of the allegations appellant is facing while at the same time always bearing in mind the principle of the presumption of innocence which favours the accused until adjudicated and convicted by a competent court.

In the present application, applicant was on bail when it is alleged that he committed the offence of which he is applying bail for. He was on bail for a similar offence, i.e. involving theft of a motor vehicle. In as much as he is presumed to be innocent I find that he is either deliberately involving himself in situations which border on dishonesty or is carelessly sailing too close to the wind. This type of

behaviour, unfortunately leads one into the only irresistible conclusion, that he has a propensity of committing further crimes and such behaviour certainly offends and prejudices the interest of justice.

In light of the above, I find that appellant is certainly not the candidate for admission to bail, his application is accordingly dismissed.

Hare & Partners appellant's legal practitioners
Attorney-General's Office respondent's legal practitioners