

JOHN RAPHAEL MASUKU

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 10 OCTOBER & 27 NOVEMBER 2003

J James for the applicant
S Musonha for the respondent

Bail Application

NDOU J: I am presiding over the trial involving the applicant where he is facing 19 counts of theft of motor vehicles and a count of robbery. The trial commenced in October 2002. The applicant previously applied for bail in HB 57/03 and was unsuccessful. He tried to achieve his liberty by way of an urgent chamber application in HB 97-03 and did not succeed. Since the latter matter around two weeks were devoted to the matter and a number of witnesses testified. The matter is due to continue for around another two weeks this term commencing on 25 November 2003. The state has covered a lot of ground and hopefully by the end of the latter period the state will have closed its case. By then the state will most likely have been given sufficient time to prosecute its case. I say so because it has already taken over a year since the trial commenced. Even in complex cases that should be a factor in the determination of the pre-conviction delay. The state cannot expect to keep the accused in custody by merely repeating what it has been saying all along. Obviously with each piece of evidence the circumstances keep on changing. Depending on the quality of evidence the state case may be enhanced or weakened. In this context the applicant cannot be faulted for launching repeated bail applications. These

HB 127/03

applications involve the liberty of the individual which should be constantly looked into. I am of the view that nothing has changed materially from the time of the determination of the applications in HB 57/03 and HB 97/03.

In the circumstances I dismiss the application for bail.

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