

**DANIEL RANCE**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
CHEDA J  
BULAWAYO 4 OCTOBER & 16 DECEMBER 2004

*J James* for applicant  
*A Vimbai-Mabande* for the respondent

Bail Application

**CHEDA J:** This is an application for bail pending trial.

Applicant is facing 2 counts of theft of motor vehicle and another of interfering with a motor vehicle. The allegations against him as presented by respondent are that between 3 March 2003 and 12 March 2004, he together with one Israel Kaseke, who is still at large, stole motor vehicles at various places. On 17 March 2004 he is alleged to have been caught red handed while interfering with a motor vehicle. He was arrested and on interrogation he implicated Israel Kaseke and Daniel Ncube.

Applicant now applies for bail for the second time having so done on 18 May 2004 and it was turned down. It is his averment through his legal practitioner that respondent had at the time succeeded in convincing the court in denying him bail on the basis that a trial date had been set. However, to date he has not been given a trial date.

The basis for applying for bail which has been previously turned down is that there should be changed circumstances between the time bail was refused and the time bail is being reapplied for. Applicant through his legal practitioner *Mr James*,

argued that, the fact, that 5 months has passed without a trial date being set and that the 5 counts of theft of a motor vehicles have been reduced to 2 is an indication that the severity of the sentence is now less than previously perceived and it therefore constitutes changed circumstances.

Respondent, however, holds a different view. Mr Vimbai-Mabande's view is that the changed circumstances if at all, are present, are immaterial. He is further of the view that if granted bail applicant is likely to abscond or interfere with witnesses to the detriment of the proper administration of justice.

Indeed, changed circumstances should determine the question of bail in subsequent bail applications. I hold the view, however that it is essential to adopt a robust approach in determining this question.

In determining changed circumstances the court must go further and enquire as to whether the changed circumstances have changed to such an extent that they warrant the release of a suspect on bail without compromising the reasons for the initial refusal of the said bail application. In *casu* applicant was initially facing 5 counts of theft of motor vehicles. These have, however, been reduced to 2 counts of theft of motor vehicles. These 2 counts on their own, upon conviction will no doubt result in a long prison term being imposed on him. In determining the question of changed circumstances based on the reduced counts, it is essential to examine whether the effect of the reduced number of counts will result in a sentence, which, if convicted applicant will receive a sentence other than a custodial term. If the sentence is likely to be a non-custodial one, then and only then should the court re-visit such an application with a view of re-examining its previous reasons for refusal.

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If it does not do so applicant will be prejudiced by the unnecessary pre-trial incarceration, on the other hand there will certainly be no good reason to release applicant on bail on the basis of a reduction of counts where the previous fears of abscondment being induced by imprisonment still prevail. This, therefore, stands to reason that the reduction of counts are not so material to an extent of earning him a sentence other than a prison term to his prejudice in the event of a conviction.

The likelihood of abscondment and/or interference with witnesses Ntombizodwa Mukondiwa and Israel Kaseke who is still at large is still present even after the counts have been reduced. The possibility of a lengthy prison term is therefore an inducement to abscond, thus resulting in his inability to stand trial.

Applicant has failed to discharge the onus upon him of proving on a balance of probabilities that he will avail himself on the trial date.

The application is accordingly dismissed.

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