

NQOBIZITHA MOYO

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 20 JANUARY 2005

T Hara for applicant
A Gabie for respondent

Application for Bail

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

The brief facts are that on 2 September 2004 applicant together with 3 others approached complainant's motor vehicle parked at 4 Swansea St, Belmont, Bulawayo. The complainant had left ignition keys inside. Applicant together with his accomplices jumped into the car started it and drove it away to Hyde Park, Bulawayo, where they stripped it into various parts and sold them to Mathew Machipisa Moyo.

Respondent opposes the granting of bail and argues that if released on bail he is likely to interfere with witnesses or abscond. Applicant submitted through his legal practitioner that he co-operated with the police and showed them the people who stole the car. It is noteworthy that he does not say what then happened to the people who stole the car after he indicated them to the police.

Against the time honoured principle of the presumption of innocence on a suspect, until proven guilty there is a need for the courts to adopt a pragmatic approach taking into account each suspect's personal involvement in the alleged offence. Applicant not in so many words admits to a certain extent as indicated by his ability in identifying the thieves but says nothing about the extent of his involvement.

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As this is a bail application, it is not necessary to delve into the merits of the case but I can not ignore the grey area which casts doubt on applicant's involvement which adds credence to respondent's argument that applicant is likely to interfere with witnesses, more so, that on the papers it is not known where they are. If he interferes, with them the proper administration of justice will be frustrated. If he absconds he will not be able to stand trial.

The fact that he is facing a serious charge its own is not a sole determining factor in the determination of bail. In *casu* it is the issue of failure to make a clean breast about his involvement in this matter coupled with the seriousness of the offence, that is likely to induce him to interfere with witnesses.

The application is accordingly dismissed.

T Hara & Partners, applicant's legal practitioners

Criminal Division of the Attorney-General Office, respondent's legal practitioners