

NABOTH MUNATSI

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 16 DECEMBER 2004 AND 10 MARCH 2005

J Mutsauki, for applicant
Ms T Mthethwa, respondent

Bail Application

NDOU J: The applicant is facing two charges of armed robbery and one of theft of motor vehicle. It is alleged that on 2 April 2004, at number 10 Fraser Road, Ilanda in Bulawayo, the accused in the company of his accomplices some of whom are still at large, all produced pistols and robbed the complainant of his Mazda B1800 motor vehicle registration number 705-585P. Upon his arrest the applicant was found in possession of the canopy for the stolen vehicle. At the time of the hearing of this application most the applicant's accomplices had been arrested. The applicant was implicated by his brother who is also an accomplice. The applicant was identified by the complainant at an identification parade held after his arrest. The applicant was involved in the breaking down of the stolen vehicle. The state's opposition is based on the grounds (a) that the applicant may abscond and not stand trial, and, (b) that he may commit further offences.

Risk of absconding

The offences that the applicant is facing are serious. Robbery using firearms is viewed in serious light by courts resulting in lengthy custodial sentences upon conviction – *S v Zuze* GS 261-81; *S v Dumani* HB-64-82; *S v Chrome* HH-327-83; *S*

HB 21/05

v *Chidoipa & Anor* HH-60-84; *S v Mvute*; *S v Baby* 1985(2) SA 61 (CK) at 62; *S v Nduna & Anor* HB-48-03 and *S v Ndlovu & Anor* HB-12-05. Theft of a motor vehicle is equally a very serious offence. The seriousness of the offences charged and the likelihood of severe sentence constitute inducement for the applicant to abscondment especially in case like this one where armed accomplices have not yet been arrested – *S v Vankathathnam* 1972(2) PH, H 139 (N) and *Mutiba v S* HB-1-05. All these factors constitute incentive to abscond – *S v Ndhlovu* 2001(2) ZLR 261(H) at 264H to 265B.

Risk of commission of further crimes

In both charges motor vehicles were the object of the crime. These offences were committed within a month of each other. The public is entitled to protection from the depredations of the accused – *Attorney-General, Zimbabwe v Phiri* 1988(2) SA 696 (ZH); section 116(7)(C) of the Criminal Procedure and Evidence Act [Chapter 9:07]; *S v Fourie* 1973(1) SA 100; *S v Patel* 1970(3) SA 563 and *Moyo v S* HB-2-05. There is a likelihood of commission of further offences. Looking at the totality of the evidence before me, I find that the applicant has failed to show on a balance of probabilities that, if granted bail, he will not abscond or commit further crimes.

Accordingly, the application for bail is dismissed.

Marondedze, Nyathi, Majome & Partners, applicant's legal practitioners
Criminal Division, Attorney-General's Office, respondent's legal practitioners