

ROPAFADZO MHUNGU

VERSUS

THE STATE

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 9 SEPTEMBER 2011 AND 15 SEPTEMBER 2011

Miss N. Moyo for applicant
Mr T. Makoni for respondent

Bail Application

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

The respondent opposed the application on the basis that if released on bail, applicant is likely to abscond and that despite the fact that his co-accused has been admitted to bail, his circumstances were different.

Applicant is facing an allegation of robbery. It is alleged that on the 14th of July 2011 at around 2115 hours, he together with his co-accused hatched a plan to rob a taxi. They stopped a taxi cab along Herbert Chitepo Street, Bulawayo posing as genuine passengers. The driver who is the complainant believed them and offered them the taxi services. He drove them towards Sizinda Township with applicant sitting on the front passenger seat.

When they got to the robot at the intersection of Nketa Drive and Sizinda Road, his co-accused pretended to alight from the vehicle, the driver then stopped the vehicle. Upon stopping the vehicle he was attacked by the applicant and his co-accused. Applicant pulled him out of the vehicle and drove away, leaving complainant stranded. Applicant was involved in an accident and was subsequently arrested.

Applicant's argument in support of his application is that the seriousness of the offence on its own is not enough reason to deprive him of his right to the admission of bail. This infact is now the settled legal position

Further, that he is presumed to be innocent until he is proven guilty by a competent court. Applicant is indeed presumed innocent at this stage. For that reason these courts will always lean in favour of the liberty of an individual against the deprivation of his liberty.

The only time the courts will show some reluctance is when his liberation will most likely result in the interference and/or frustration of the proper administration of justice.

In casu applicant's role in the alleged commission of the crime need to be carefully examined in order to come out with an equitable determination.

I agree with applicant that the seriousness of a crime without other factors is not enough reason to deprive him of his liberty, regard being had to the time honoured presumption of innocence. Appellant was arrested in possession of the motor vehicle which he had forcibly taken away from the complainant whom he left behind together with his accomplice.

This, no doubt, heavily implicates him and to me is enough reason to serve as an incentive for him to abscond. He is aware that he will have to explain the circumstances surrounding his possession of the said motor vehicle.

In my view, if the overwhelming evidence against him will not compel him to abscond, then nothing else will. I am aware that his accomplice has been admitted to bail by this court. However, their alleged involvement is clearly distinguishable, making him more culpable than his accomplice, at least prima facie.

In my view applicant has more questions to answer in order to extricate himself from this alleged criminal web which he has entangled himself in.

The consequences of his release on bail are too ghastly to contemplate, as they will no doubt result in his sure abscondment thereby failing to appear in court for trial.

The application is dismissed.