

JOSEPHAT MUUNGANIRWA

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE

NDOU J

BULAWAYO 17 DECEMBER 2004 & 10 MARCH 2005

J Mutsauki for applicant

A Gaibie for the respondent

Bail Application

NDOU J: The applicant resides at C 32 Njube, Bulawayo and he is not employed. He is aged 23 years. He was arrested on 6 July 2004 on a charge of theft of a motor vehicle. He is denying the charge. The brief facts of the crime are the following. On 17 June 2004 and at 3rd Avenue and Main Street, Bulawayo, the applicant together with three others allegedly stole a Mazda pick-up white in colour bearing registration number 677-926A. At the time it was stolen the vehicle was parked and locked. An unknown instrument was used to break the left front door window. The thieves used their own keys or means to start the vehicle and drive it away. The vehicle was driven to 107 Harrisvale, Bulawayo, where it was kept until 5 July 2004 when two of the applicant's accomplices (one of whom is still at large) drove the vehicle to Harare. There, the applicant and one of his accomplices tried to sell the stolen vehicle at Boka Tobacco Auction Floors to a certain man who became suspicious and alerted the police. Against this background the applicant now applies for bail pending trial. The application is opposed on the grounds that (a) he is likely to abscond, (b) he is likely to commit further offences, and (c) he is likely to interfere with witnesses and/or evidence. Although an accomplice was granted bail by this

HB 19/05

court, the respondent has placed on record that their circumstances are different as the applicant is facing other charges in which the said accomplice is not involved. In the other trial the charges were withdrawn pending the re-arrest of an accomplice who jumped bail. The vehicle was stolen in Bulawayo and the applicant and another were arrested in Harare trying to sell it hardly three weeks after the theft. The offence was committed by an organised gang. There is real risk of commission of further offences in this matter. The applicant has a pending similar matter (albeit temporarily withdrawn) and this offence was allegedly committed when he was still awaiting the finalisation of the pending matter. He had thus exhibited a propensity to commit similar offences. This is a strong factor weighing against him – *Attorney-General Zimbabwe v Phiri* 1988(2) SA 696 (ZH); *S v Patel* 1970 (3) SA 563; *S v Ndhlovu* 2001(2) ZLR 261 (H) and section 116(7)(c) of the Criminal Procedure and Evidence Act [Chapter 9:07]. The applicant was not acting alone but in association with others and one such accomplice is still at large. This is a factor weighing against his application in *S v Vankathathnam* 1972(2) PH, H 139(N).

Weighing all the factors in this matter I hold the view that the applicant is not a suitable candidate for bail. Accordingly his application for bail be and is hereby refused.

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