

DOUGLAS MABASA MUZVONGI**Versus****THE STATE**IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 10 & 17 JANUARY 2019**Bail pending trial***A. Ndlovu* for the applicant
K. Ndlovu for the state

MAKONESE J: The applicant has been charged with contravening section 113 (1) of the Criminal law (Codification and Reform) Act (Chapter 9:23), theft of motor vehicle. The applicant denies the charges. He has filed an application for bail pending trial and avers that he is a “perfect” candidate for bail. The motor vehicle which is the subject of the charge was stolen and driven away from Nobert Hungwe’s residence at number 560 Medium Density Area, Plumtree on 6th October 2018. The motor vehicle, a Honda Fit, was recovered in Harare’s Epworth area in the custody of a panel beater one Nhamo Chifombe. Chifombe revealed that the vehicle had been brought to him for repairs and spray painting by the applicant and his accomplices. The applicant admits that he owns and operates a car sale. He avers that he had no knowledge that the Honda Fit had been stolen and contends that the motor vehicle which bore Botswana registration plates at the time he bought it was not stolen property. In his bail statement applicant seemingly suggests that he genuinely bought an imported vehicle and has no case to answer. The applicant’s version is quickly exposed in that by his own admission, he bought a foreign registered vehicle without being shown the customs documents, police clearance and registration book. A car dealer is unlikely to enter into a purchase agreement of a motor vehicle without any documentation. Applicant deals in motor vehicles. He cannot explain his possession of a recently stolen motor vehicle and gives an explanation which defies any logic. After the vehicle was stolen from Plumtree it surfaced at applicant’s car sale. His explanation that he bought it off an unnamed buyer who had imported it from Botswana (without any documentation) is as false as it sounds.

It is this court's view that the state's case against the applicant is very strong. In the event of a conviction the applicant faces a lengthy prison sentence. Further, the Investigating Officer indicates that the applicant has pending cases under Borrowdale CR 46/11/18 where he is facing fraud charges involving a motor vehicle. He is also facing another charge of theft of a motor vehicle under Mrewa CR 201/08/18. He is out on bail on these charges. The applicant clearly has a propensity to commit offence of a similar nature.

Section 116 of the Criminal Procedure and Evidence Act (Chapter 9:07) empowers the court to admit an applicant to bail pending trial. Section 115C (2)(ii) B provides that if the applicant is charged with an offence in Part II of the Third Schedule he bears the onus of proving on a balance of probabilities that exceptional circumstances exist, which in the interests of justice permit his or her release on bail. Theft of a motor vehicle is a specified offence. In the result, the onus is on the applicant to convince the court that is a good candidate for bail pending trial. In an application of this nature, the court seeks to strike a balance between the liberty of the individual, who is presumed innocent until proven guilty by a court of law, and the overall interests of the orderly administration of justice. Applicant does not dispute that he is currently on bail in respect of similar cases involving thefts of motor vehicles. The courts will interfere with the liberty of an accused person where he is clearly shown to have an inclination to commit further offences if granted bail. As a matter of policy and law and where possible, the courts will lean in favour of individual liberty. See *S v Biti* 2002 (1) ZLR 115 (H).

In the present application, whilst recognizing the applicant's presumption of innocence, the overriding consideration is the fact that the applicant has a propensity to commit similar offense if granted bail. Applicant's accomplices are still at large and the likelihood to interfere with investigations if applicant is granted bail pending trial is a real possibility, and not a mere possibility.

I have considered all the facts placed before me and the state's fear that that applicant is part of a well organised criminal gang is justified. The affidavit of the Investigating Officer details how the applicant was arrested, and how it was difficult to locate the applicant. It is my

view that granting the applicant bail at this state would jeopardize the investigations and compromise the interests of justice.

In the circumstances, I conclude that the applicant is not a proper candidate for bail and accordingly dismiss the application.

Dube & Associates, applicant's legal practitioners
National Prosecuting Authority, state's legal practitioners